

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 233] NEW DELHI, WEDNESDAY, SEPTEMBER 16, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th September 1953

S.R.O. 1703.—Whereas the election of Shri Mohammad Taqi Hadi, s/o Shri Saeed Mohammad Nabi Hadi of Amroha, District Moradabad, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Amroha (West) constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Siri Ram, s/o Shri Tulsi Ram, Caste Yadav, Village Nasirnagla, Tehsil Amroha, District Moradabad;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT BAREILLY

PRESENT:

Sri D. S. Mathur, I.C.S.—*Chairman.*

Sri D. R. Misra—*Member.*

Sri J. K. Kapoor—*Member.*

ELECTION PETITION No. 274 OF 1952

Sri Ram—*Petitioner.*

Versus

1. Mohammad Taqi Hadi,

2. Chuttan Singh,

3. Abdul Salam,

4. Balgovind,

5. Pyarey Lal,

6. Ram Kumar,

7. Sita Ram—*Respondents.*

Sri Kailash Sahai, Advocate, Sri Man Mohan Lal Mathur, Advocate, and others for the petitioner.

Sri Gopi Nath Dixit, Advocate, Sri Banwari Lal Agarwal, Advocate, and another for respondent No. 1.

JUDGMENT

This election petition was filed by Sri Ram, son of Tulsi Ram of village Nasir Nagla, Tahsil Amroha, district Moradabad, to contest the election of Mohammad Taqi Hadi, respondent No. 1, to the U.P. Legislative Assembly from Amroha (West) Constituency held on the 28th January 1952.

The petitioner along with the seven respondents was a duly nominated Candidate for the said election in which the respondent No. 1, Mohammad Taqi Hadi, son of Mohammad Nabi Hadi of Amroha, district Moradabad, was duly elected and whose declaration of the election was published in the Official Gazette of the Uttar Pradesh, dated 26th February 1952.

The petitioner who had secured about 8,500 votes was a defeated candidate and respondent No. 1 who was declared elected had secured 18,000 and odd votes.

The petitioner has sought to challenge the election of respondent No. 1 on the following grounds:—

(i) That respondent No. 1 himself and through his agents committed the corrupt practice of bribery in the form of:

- (a) paying Rs. 1,600 as illegal gratification to respondent No. 4 (Balgovind) in order to induce him to withdraw from the contest;
- (b) offering handsome contribution towards the construction of a local irrigation dam and a school, to a section of voters with the object of directly or indirectly inducing electors to vote in his favour;
- (c) offering substantial assistance and help to a section of the voters from the Amroha Municipal Committee and the Amroha Consumers' Co-operative Society.

(ii) That the respondent No. 1 who was member of the Amroha Municipal Committee and President of the Consumers' Co-operative Society Sub-Area (C) at Amroha, himself and through his agents committed the corrupt practice of undue influence in using his position as such and in using the official influence of Panchayat Officers and in threatening voters with suspension of their ration cards.

(iii) That the respondent No. 1 and his agents hired and procured vehicles for the conveyance of electors to the polling stations and back to their places.

(iv) That respondent No. 1 and his agents connived at the removal of ballot papers during polling hours outside the polling stations in order to obtain those papers from those persons and to make use of them for the benefit of the said respondent by managing to get them put inside the ballot boxes assigned to the said respondent.

(v) That respondent No. 1 and his election agents manoeuvred to secure double voting by a number of women electors in Amroha City booths.

(vi) That respondent No. 1 and his agents secured votes by inducing persons to impersonate for the registered electors, who were, at the time of election, out of India or were dead.

(vii) That the result of election has been materially affected by the said corrupt practices.

(viii) That the return of election expenses was false and his election becomes void.

(ix) That respondent No. 1 made illegal use of the National Flag for his election campaign.

(x) That an illegal discrimination was made between the electors of the rural and urban areas in so far as women electors were given special facilities of separate booths in the urban area, but the same were denied to the women electors of the rural areas, and the electors of urban areas were given special facilities in the form of 40 booths for about 29,000 voters, whereas electors of rural areas had only 41 booths for about 41,000 voters. The petitioner being a resident of rural area was prejudiced on this account as many rural electors who would have otherwise voted for him did not exercise their right of franchise on account of the denial of the said facilities given to electors of urban areas.

The details of all these grounds on which the election of respondent No. 1 is sought to be challenged are given in the list of particulars, Parts I to V.

On 12th January 1953 counsel for the petitioner withdrew his plea of offering handsome contribution towards the construction of a local irrigation dam mentioned in para. 4(i) (b), of offering substantial assistance and help to a section

of voters contained in para 4(i) (c) of undue influence contained in para 4(ii) (a) and (c), of inducement contained in para 4(vi), of using National Flag contained in para 4(ix) and the corresponding particulars contained in the list of particulars in Part I(b), Part I(c) and Part II(i) (a).

On 23rd January 1953 counsel for the petitioner further withdrew the pleas of undue influence contained in para. 4(ii) (b), of removing ballot papers contained in para. 4(iv) of securing double voting contained in para. 4(v), and the corresponding provisions in the list of particulars contained in clause 1(b) of Part II and of Part IV.

Only the respondent No. 1 contested the petition. He denied all the allegations of the petition and a preliminary objection was taken that the petition was defective for not setting forth in the petition and also in the list of particulars full particulars of corrupt practices and hence the petition was liable to be dismissed. Consequently a preliminary issue (No. 1) was framed.

Finding on this preliminary issue (Annexure A) was given on 6th February 1953 and it was found that the allegations contained in paras. 4(iii) and 4(viii) of the petition and Parts III and IV of the list of particulars were too vague and could not be allowed to be amended and the petitioner was not allowed to give further and better particulars on these points.

As regards other allegations of the petition the petitioner was directed to give further and better particulars which order was complied with on 19th February 1953.

On the pleadings of the parties as then stood following issues were framed:—

ISSUES

2. Did respondent No. 1 pay the illegal gratification to Balgovind, respondent No. 4, as alleged, with the object of securing his withdrawal from the contest to the elections from the Amroha Constituency?

3. Did respondent No. 1 contribute a sum of Rs. 1,000 to the Junior High School of village Jamuna Khas for construction of the school building with the object of directly or indirectly inducing the electors to vote in their area in his favour?

4. Did respondent No. 1 contribute Rs. 500 towards the Junior High School of village Jabda for the construction of the school building with the object of directly or indirectly inducing the electors of that area to vote in his favour?

5. Did respondent No. 1 and his agent procure the two vehicles for the conveyance of voters from their residence to the booths in Amroha City and back?

6. Is respondent not guilty of submitting false returns of election expenses by not including the aforementioned amounts and also a sum of Rs. 25 on account of the clerical work done by Gauri Shanker of Amroha?

7. Was any illegal discrimination made, as alleged, between the electors of the rural and the urban areas? If so, its effect?

FINDINGS

Issues Nos. 3 and 4.—No evidence was led to prove the allegations contained in these issues. They are, therefore, decided against the petitioner.

Issue No. 5.—In para. 4(iii) of the petition read with Part III of the list of particulars it was said that the respondent No. 1 and his agents hired and procured vehicles for the conveyance of voters from their residence to the booths in Amroha City and back. The vehicle consisted of motor trucks, lorries, cycle-rickshaws and motor cars. Particulars about motor trucks, lorries and cycle rickshaws were not given, and consequently the petitioner was not allowed to lead evidence as regards the use of such vehicles in the course of election. The only particulars given were in respect of two motor vehicles, one of which had the registration number as U.S.N. 141 and the other was carrying a trade mark of *Birla*. It was also said that the matter was reported to a magistrate named Sri Mukerji on duty who made note of this matter and questioned the drivers and the voters on the spot. When giving further and better particulars it was said on behalf of the petitioner that the two vehicles said above were procured by Mohammad Taqi Hadi, respondent No. 1 and one Mohammad Arzani, brother-in-law and worker of respondent No. 1, and the owner of the said vehicles was Sri Ibrahim of Moradabad who was manufacturer of *Nayab Biris* in the district of Moradabad. It was also said that the said vehicles were used on the polling day for carrying women voters to polling centres from their residence and back in Amroha town. It was further said that the two vehicles were seen specially in the vicinity of Imamul Madaris School Polling Station in the town of Amroha.

The petitioner (P.W. 3) in his statement said that on one occasion he saw the voters of respondent No. 1 being brought in a motor vehicle of which the registration No. was U.S.N. 141 and the words 'Nayab Biri' were painted on it. In his cross-examination he stated that he saw voters in only one motor vehicle, which was procured by respondent No. 1, being brought to a polling station. Further on he stated that he had heard that he had engaged one more vehicle and that the motor vehicles seen by him belonged to Messrs. Mohammad Ibrahim and Mohammad Ishaq, Proprietors of Nayab Factory. He saw the motor vehicles coming to the polling stations only once but he did not complain of it to any public servant. He had only asked his party workers to report after catching red-handed. This witness could not say how he got the information that it was respondent No. 1 who had procured or hired these vehicles. It appears that he was not sure as to who were the owners of these vehicles. At first it was said that Mohammad Ibrahim was their owner and then that Mohammad Ibrahim and Mohammad Ishaq were the owners. His not making any complaint to any public servant makes the allegation very doubtful. Although he was told that the motor vehicles had been caught carrying voters, still he stated that his workers did not complain of it in writing. I think his statement does not carry the case any far.

Next witness on the point is Sri S. S. Chhabra *alias* Shiam Ji (P.W. 10). This witness was not an agent of the petitioner. He belonged to Delhi and had come to help Sri Om Prakash Sharma of Chandausi who was a candidate for the House of People from Sambhal, Amroha and Hasanpur Constituency. Both Sri Om Prakash Sharma and the petitioner belonged to the Socialist Party. This witness had taken photographs of the vehicles which it is said were bringing lady voters on behalf of respondent No. 1. His statement also does not prove that respondent No. 1 had procured or hired these vehicles for carrying lady voters from their residence to the polling stations. The photographs are on the file. They are Exs. 26 to 29 while their negatives are Exs. 26A to 29A. Exs. 26 and 28 are the photographs of the vehicle No. U.S.N. 141 and Exs. 27 and 29 are the photographs of the other vehicle. This witness stated that he saw Congress lady workers without purdā and voters in *burqa* alighting from the vehicle No. U.S.N. 141 and that in the other vehicle both the Congress lady workers and voters were in *burqas*; and that after alighting from the motor vehicles the workers and the voters went to the Congress Camp. It is not proved from his statement as to what was the basis for his saying that the ladies who alighted from the two motor vehicles and went to the Congress Camp were voters. This witness in cross-examination at first said that he at first came to Amroha from Sambhal by bus, but when he was asked as to what fare he paid, the witness replied that he travelled in the jeep of Sri Om Prakash Sharma. This witness while admitting that he had come to work for Sri Om Prakash Sharma and also that the workers of Sri Om Prakash Sharma and the petitioner were common did not know the agents of Sri Om Prakash Sharma. He admitted that he did not inform the agents of Sri Om Prakash Sharma that the voters were being brought in vehicles. He had given information of this to Sri Bhagwati Prasad (P.W. 17). I think, not much reliance can be placed on the testimony of this witness. As a worker of Sri Om Prakash Sharma or the petitioner he should have informed the Polling Officer, the Presiding Officer or the Agents as to what was going on. Gaya Singh (P.W. 15) was examined to prove the ownership of U.S.N. 141 and he stated that Mohammad Ishaq is the proprietor of this vehicle. This falsifies the version of the petitioner that these vehicles belonged to Mohammad Ibrahim.

Next witness on the point is Sri Bhagwati Prasad (P.W. 17). This witness also stated that he was a worker of Sri Om Prakash Sharma who was seeking election to the House of People and also for the petitioner who was a candidate for the U.P. Legislative Assembly. He stated that he was generally supervising the polling and the agents and workers of Sri Taqi Hadi, respondent No. 1, were bringing voters in two motor vehicles. Both of them bore the mark of 'Biri' and the registration number of one of them was U.S.N. 141. These voters were ladies and were wearing *burqas*. Further on he said that when he saw the voters being brought on the motor vehicles at the Town School polling station and also at another polling station he brought the fact to the notice of Sri Mukerji, the then S.D.M., Bilari, and Sri Dutta, I.A.S., under training. Curiously enough he made no complaint to the Presiding Officer of the polling station nor did he complain in writing to Sri Mukerji and Sri Dutta, who were supervising the polling. Neither Sri Mukerji nor Sri Dutta have been examined to prove that this witness had made any oral complaint to them. It looks rather strange that according to this witness women voters were in the motor vehicles when he had pointed out this fact to Sri Mukerji and Sri Dutta and still there is no writing to show that Sri Mukerji and Sri Dutta made enquiries or did anything in the matter. This witness in cross-examination stated that he was agent of Sri Om Prakash Sharma at a few stations, but he did not remember their names or of any of them. Had

he named any station where he was the polling agent of Sri Om Prakash Sharma, the fact could easily have been ascertained from the election records and that appears to be the reason for this witness avoiding giving out the name of the polling station where he was the agent. Both Sri Om Prakash Sharma and the petitioner had come to the two polling stations where it is said that this witness had seen lady voters being brought in the two motor vehicles. He had informed them of the fact, but neither of them took any step to bring the matter to the notice of the authorities or to get the illegality stopped from being committed any further. Further on he stated that he had sent an application in writing to the Presiding Officer of Town School polling station at Amroha asking him to see for himself that voters were being carried in motor vehicles. No such application has been brought on the record. Further on he stated that so far as he remembered Sri Mukerji and Sri Dutta had made a note of it. They had caught the driver of the motor vehicle and had taken him to Kotwali along with the motor vehicle and he had also gone to the Kotwali. Mohammad Ibrahim and many other Congressmen had assembled in the Kotwali. Then Sri Mukerji asked him to lodge a report and to go away. He then lodged the report which is Ex. 34. It may be pointed out that no note of Sri Mukerji or Sri Dutta has been brought on the record. P.W. 16 Mahesh Shanker Misra who was summoned with the general diary of Amroha Kotwali, dated 27th and 28th January 1952 has proved that there was no entry in the general diary of these dates about the arrival of Sri Mukerji or Sri Dutta at thana Kotwali of Amroha. The only entry in the general diary of 28th January 1952 of Amroha Kotwali is that Constable Mohammad Sharif was being sent with S.D.M. Bilari to check polling stations Nos. 16, 17, 18, 23 and 25. A copy of this entry is Ex. A13. If Sri Mukerji had taken the driver and the vehicle to Kotwali Amroha, the fact must have been recorded in the general diary. The report lodged by the witness is Ex. 34. In this report it is said that because lady voters were being brought by Mohammad Taqi Hadi in motor, rickshaw and tongas, he had sent a report to the polling officer, but the latter replied that he could do nothing and then he sent a telegram to the polling officer of polling station No. 16 and another to District Magistrate, Moradabad. A short time after that Sri Mukerji and Sri Dutta came up and in their presence a motor of *Biri walas* of Moradabad was brought by an agent of Mohammad Taqi Hadi and there were 25 lady voters in that vehicle and that Sri Mukerji and Sri Dutta had seen this fact and had taken the statement of the driver and had made enquiries also. It may be pointed out again that neither Sri Mukerji nor Sri Dutta have been examined to prove all these allegations. It may also be pointed out that in his statement before the Tribunal this witness did not state about his sending the report and the telegram to the polling officer. In the report Ex. 34 the witness did not give out the name of the agent of Mohammad Taqi Hadi nor did he mention the name of the driver of the vehicle. Ex. 33 is the telegram which this witness had sent to District Magistrate, Moradabad. This telegram was sent on behalf of Sri Om Prakash Sharma, candidate for the seat of Parliament, on 28th January 1952. In this telegram it was said that Congress candidate was bringing voters in motors, buses and rickshaws and Presiding Officer was not taking action in spite of application. It may be pointed out here that in the report lodged by this witness at Kotwali Amroha (*vide* Ex. 34) it was said that the voters were being brought in motors, rickshaws and tongas and that he had sent a report to the polling officer. There is no mention of buses, but in this telegram buses have been included and tongas have been omitted. In Ex. 34 this witness had mentioned that he had brought the fact to the notice of the polling officer, but in this telegram he mentioned that the matter has been brought to the notice of the Presiding Officer. Sri Jayal, now Under Secretary, Planning Department, was the Returning Officer of the Amroha (West) Constituency and was also the District Election Officer. He was examined as D.W. 5. This telegram Ex. 33 was sent to him for report and he reported that he had visited a number of polling stations at Amroha during the polling hours and did not come across such cases. This report of the Returning Officer is Ex. A24. Sri Jayal also stated that on 28th January 1952 he had inspected many polling stations at Amroha while the polling was taking place and he did not find voters being carried on motor vehicles or buses. He also stated that except for the telegram (Ex. 33) no one complained to him that the voters were being carried in motor vehicles. This witness in cross-examination has stated that he had started making round of the polling stations of Amroha town from before 8 A.M. on 28th January 1952 and after the polling started he had made a round of all the polling stations and then went to rural areas. He also stated that he met Messrs. Mukerji and Dutta nearabout 10-30 or 10-45 A.M. before leaving for the rural area. In face of the evidence of Sri B. D. Jayal (D.W. 5) I think not much weight can be attached to the testimony of the petitioner and his witnesses on this point. Mohd. Taqi Hadi, respondent No. 1, entered the witness-box as D.W. 8 and denied having hired or procured vehicles for taking voters from their houses to the polling booths and back.

In face of all this evidence it appears that the allegations contained in issue No. 5 were not satisfactorily established.

The issue is decided in the negative.

Issue No. 7.—There is nothing on the record to show that any illegal discrimination was made between the electors of rural and urban areas in fixing the number of booths in the two areas. Sri Jayal (D.W. 5) was Returning Officer. He has clearly stated that there were instructions regarding reserving of booths for lady voters in urban areas. He had prepared a provisional list of the polling booths and had sent the list to the Tehsildar for calling objections and after taking into consideration the objections, if any, the final list of polling booths was prepared. The list of polling booths was finalized after the expiry of the date for withdrawal of nomination papers. He also stated that he had determined the number of polling booths in accordance with the instructions received from the Electoral Officer. He also stated that he fixed the number of polling booths of ladies on the basis of instructions received from the higher authorities. The only evidence on this issue is the statement of the petitioner. He stated that as the polling booths in rural areas were not sufficient and no facilities were provided for women voters many of them went away without casting their votes. This sort of general and vague allegation cannot be considered sufficient to prove that the result of election was materially effected by not providing sufficient number of booths in rural areas. It is a matter of common knowledge that voters in urban areas are more anxious to exercise their right of franchise than the voters in rural areas and simply because the number of booths in rural areas as compared to urban areas was less, it does not necessarily mean that there was illegal discrimination in providing booths in rural and urban areas.

Thus in the present case the petitioner has failed to prove that there was any non-compliance of the provisions of the Constitution and that the result of election has been materially affected by such non-compliance.

The issue is, therefore, decided in the negative.

Issue No. 2.—This is the main issue in this case. It may be pointed out at the very outset that there is no direct evidence to prove as to when the respondent No. 1, if at all, offered Rs. 1,600 to respondent No. 4 with the object of inducing and securing his withdrawal from the contest. There is also no direct evidence that respondent No. 4 accepted this offer and when was such offer accepted. There is only circumstantial evidence in the case which shall be dealt with later on.

The case of the petitioner as contained in para. 4(i)(a) of the petition was that respondent No. 1 himself and through his agents committed the corrupt practice of bribery in the form of paying Rs. 1,600 as illegal gratification to respondent No. 4 with the object of inducing and securing the withdrawal of his candidature from the contest. In Part I(a) the list of particulars it was said that respondent No. 1 secured the withdrawal of respondent No. 4, Balgovind, on payment of Rs. 1,600 to the latter to induce the said withdrawal. The payment was made in this way that respondent No. 1 paid the amount to Sri Jagdish Saran by cheque drawn on Punjab National Bank Ltd., Amroha, for being delivered to respondent No. 4 and this amount was paid to the latter by cheque by the said Jagdish Saran. Thus it is clear that the petitioner's case originally was that Rs. 1,600 were paid by Mohammad Taqi Hadi respondent No. 1 to respondent No. 4 through Sahu Jagdish Saran in order to secure the withdrawal of his candidature.

Subsequently when the petitioner was directed to give further and better particulars of the corrupt practices by the order of the Tribunal dated 6th February 1953, the petitioner on 18th February 1953 gave such particulars and in it, it was said that the cheque for Rs. 1,600 was issued by Mohammad Taqi Hadi respondent No. 1 on 23rd December 1951 and the same was cashed by Sahu Jagdish Saran in the last week of December 1951 from the Punjab National Bank Ltd. It was further said that Sahu Jagdish Saran paid this amount of Rs. 1,600 by two cheques, one for Rs. 1,300 in favour of Balgovind responder, No. 4 and the other for Rs. 300 in favour of one Sri Bhukan Saran Vakil or Amroha. Both these cheques were drawn on the Imperial Bank of India, Moradabad, payable at Amroha just after the polling day and were probably cashed within two or three days after the election at Amroha from the said bank. Thus it appears that there has been variation in the petitioner's case. The case of the petitioner originally appeared to be that Rs. 1,600 were paid to Balgovind respondent No. 4 before he withdrew his candidature. But later on the case appears to have been changed in so far that the payment by respondent No. 1 was made to Sahu Jagdish Saran and the payment to Balgovind

was to be made after the elections were over. From these pleadings it follows that respondent No. 1 deposited Rs. 1,600 with Sabu Jagdish Saran in order to secure the withdrawal of respondent No. 4 from contest. This clearly means that the payment of Rs. 1,600 was not made to Balgovind till after the polling and that it was promised to be paid in case he withdrew from the contest. It was not said in the petition or in the list of particulars that Rs. 1,600 were promised to be paid to Balgovind and were only paid after the elections were over. It was also not said in the petition that out of the sum of Rs. 1,600 only Rs. 1,300 were paid to Balgovind, respondent No. 4, and Rs. 300 were paid to Sri Bhukan Saran Vakil.

It is admitted that Balgovind was a Congressman. It is also admitted that he had applied for Congress Ticket to stand for election to the U.P. Legislative Assembly in the last General Election but it was refused and the Congress Ticket was given to respondent No. 1. It was then that he filed his nomination paper as an independent candidate. From Ex. A5 it appears that Provincial Congress Committee had decided on 5th December 1951 that Congressmen should not oppose Congress candidates for election to U.P. Legislative Assembly and a telegram Ex. A4 was sent to Balgovind on 5th December 1951 asking Balgovind to withdraw from contest immediately. It also appears from Ex. A5 that Balgovind was required to give information of withdrawal upto 8th December 1951. He was again informed by this letter Ex. A5, which is dated 14th December 1951, that he had been suspended from Congress Membership and he was given another opportunity to explain as to why disciplinary action be not taken against him. He was to give his reply by 22nd December 1951. Ex. A38 is the letter of Balgovind, respondent No. 4, addressed to Pradhan Mantri, Uttar Pradesh Congress, Lucknow. This letter is dated 21st December 1951. By this letter Balgovind informed the U.P. Provincial Congress Committee that he has withdrawn his candidature. Ex. A21 is the telegram sent by Balgovind to the General Secretary, Provincial Congress Committee, intimating him that he had withdrawn from contest and promised firm support to Congress. In this telegram it was mentioned that letter had already been sent. Ex. A22 is a telegram from Professor Ram Saran, M.P., to the Congress Committee at Lucknow intimating that "Balgovind withdraws and condonation of action was requested." All this correspondence is contained in the file which was summoned from the office of the U.P. Congress Parliamentary Board, Lucknow. From all this correspondence it appears that Balgovind, respondent No. 4, was Congressman and not having been given Congress Ticket for candidature to the Legislative Assembly he filed his nomination paper as an independent candidate. Then the Executive Committee of the U.P.C.C. required him to withdraw his candidature till 8th December 1951. Not receiving any reply from Balgovind, the U.P.C.C. by its letter, dated 14th December 1951 as said above threatened Balgovind with disciplinary action and Balgovind withdrew his candidature on 21st or 22nd December 1951. Thus it is proved that Balgovind, respondent No. 4, withdrew from contest at the latest on 22nd December 1951.

It is admitted by the petitioner and is also proved that respondent No. 1 issued the cheque for Rs. 1,600 to Sahu Jagdish Saran on 23rd December 1951. It is to be seen as to whether respondent No. 4 (Balgovind) withdrew from contest as a result of bribe paid or offered to him by respondent No. 1 or he withdrew as a result of the threat held out by U.P.C.C. and of persuasions by Professor Ram Saran, M.P.

Before entering into the merits of the case on the point at issue it is necessary to decide as to what should be the standard for judging the evidence. It is said for the respondent No. 1 that the charge of bribery is a very serious charge and highly penal and that it is not an actionable wrong and the evidence requisite to prove it should not fall short of that required to prove a criminal charge.

On behalf of the petitioner it was contended that the trial of election petitions was more of a civil nature than of a criminal charge and the evidence should be judged from the same standard as in a civil suit. Reliance was placed on a ruling of the Calcutta High Court *re. Nasir Uddin versus Haji Mohammad Yusuf* reported in 165 Indian Cases at page 849. In this case His Lordship remarked that "the trial of an election petition is not governed by the rules applicable to a criminal case." This proposition cannot be controverted. Section 90(2) of the Representation of the People Act clearly lays down that "subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits." There is thus no question that the trial of an election petition is to be governed by rules applicable to criminal cases. But that is not the point here.

The question is that the petitioner charges respondent No. 1 of having paid bribery to respondent No. 4 and in order to bring home the charge of bribery whether the evidence is to be judged more strictly than in a civil suit. In the election petition of Tricum Das Dwarka Das against Sir Vasanta Rao A. Dabholkar, relating to Bombay Legislative Council, reported in Indian Election Petitions Vol. IV by Jagat Narain, it was remarked that the procedure applicable to an enquiry is to be as nearly as may be in accordance with that applicable to the trial of suits under the Code of Civil Procedure, but that enquiry also partakes of the nature of one for the trial of an offence and the standard of proof required to bring home the alleged corrupt practice should be determined accordingly. Further on in this very ruling it was remarked that it is true that the statute regarding bribe is highly penal, yet in construing penal statutes we must not by refining defeat the obvious intention of the legislature.

In the case of B. Gajendra Chandra Chaudhuri and 7 others *versus* Hon'ble P. C. Dutta Bahadur, relating to Assam Legislative Council, reported in Election Cases by Hammond at page 387 it was remarked at page 391 that "whether a case is of civil or criminal nature for this purpose does not depend on the nature of Tribunal which tries it or the procedure by which it is tried, but on nature of the issue." At page 392 in this very case it was remarked that "in the case before us the allegation was that Gopendra committed a criminal offence, viz. that of bribery, the evidence produced must therefore be of the same standard as would be required in a criminal proceeding." In another case K. V. Krishna Swami Nayakar *versus* A. Rama Swami Mudaliyar and another relating to Madras Legislative Council reported at page 394 of the Election Cases by Hammond it was remarked at page 310 that "for this reason that the charge of bribery is a serious charge in fact a criminal charge we consider that the evidence requisite to prove it should not fall short of evidence required to prove any criminal charge." The same view was taken in the Cases reported at pages 231, 257, 562, 665, 757 and 840 of the Indian Election Cases by Sen and Poddar. I am, therefore, of opinion that the evidence required to prove the alleged practice of bribery should not fall short of the standard required to prove a criminal charge and the evidence should be judged more strictly than that required in a civil suit.

With this background we have to see whether in the present case the petitioner has proved the charge of bribery successfully or not. The only evidence is of circumstantial nature. I think the circumstantial evidence to bring home a criminal charge should be very strong and should be such as not to admit of any doubt.

The petitioner has led evidence to prove that on 17th December 1951 a meeting was convened at the house of Sita Ram (respondent No. 7) to form an united front against the Congress Candidate. In this meeting of 17th December 1951 a resolution Ex. 6 was passed to the effect that Balgovind, respondent No. 4, be set up to contest the election against the Congress Candidate Mohammad Taqi Hadi, respondent No. 1, and all other candidates should withdraw from contest and support Balgovind. Sri Ram Yadav (P.W. 3), Piarey Lal (P.W. 4), Pahlad Dass (P.W. 5), Virendra Kumar (P.W. 11), and Sita Ram (P.W. 13) have stated that the notice Ex. 17 was circulated to call such meetings and Ex. 6 was the resolution passed in that meeting. Ram Saran Dass (P.W. 6), father of Balgovind and Balgovind (P.W. 8) denied these facts, although they were signatories to the notice Ex. 17. I am inclined to believe that Balgovind and Ram Saran Dass are most unreliable persons and have given false statements. The fact appears to be that Mohd. Taqi Hadi, respondent No. 1, was originally a Muslim Leaguer. Balgovind, respondent No. 4, Piarey Lal, respondent No. 5, Ram Kumar Vaid (P.W. 6) were Congressmen. Balgovind, Piarey Lal and Ram Kumar Vaid had applied to the U.P. Congress Parliamentary Board for being given Congress Tickets to stand for the election to the U.P. Legislative Assembly from Amroha (West) Constituency (*vide* Exs. A37, A34 and A36 respectively). None of them was given the Congress Ticket. The respondents Nos. 2 to 7 were naturally dissatisfied with this decision of the U.P. Congress Parliamentary Board and they all filed their nomination papers as candidates of different parties or as independent candidates. It was for this reason that Piarey Lal, respondent No. 5 and respondent No. 7 thought of making an united front. As Balgovind being a Congressman was considered to have some influence over the public, he was elected to contest the election against the Congress Candidate. Ram Saran Dass (P.W. 6) went so far as to deny the signatures on Ex. 17. Balgovind admitted his signatures on Ex. 17 but added that this circulation slip was originally dated 6th December 1951 and the meeting was to be held on 7th December 1951 and that the dates had been changed from 6 to 16 and 7 to 17. He denied having attended that meeting in which the resolution Ex. 6 was said to have been passed. On the other hand, both of them, i.e., Ram Saran Dass and Balgovind set up an

absurd story that there was a move for shifting the Amroha Hospital to some building of the District Board in which a District Board Primary School was located and Piarey Lal and Shiam Bchari Lal approached Balgovind on 18th February 1953 with 6 papers like Ex. 6 and asked him to sign them alleging that they were representations to be sent to different places. Balgovind said that he had read the first two papers and then signed all the papers. Ram Saran Dass said that when these papers were brought to him he signed Ex. 6 without reading the contents, as he saw the signatures of his son on it. This story cannot be believed for a moment. Both Ram Saran Dass and Balgovind were extremely dissatisfied with the decision of the U.P. Congress Parliamentary Board in giving the Congress Ticket to respondent No. 1 and Balgovind at that time must have welcomed the situation in being selected by all the parties to contest the election against the Congress nominee. It may be pointed out here that both Balgovind and his father Ram Saran Dass have told bare faced lies. Balgovind was sitting in the veranda close to the door of the court room behind the chik while Sahu Jagdish Saran was being examined, to overhear his statement, and when he was called in and questioned he denied his being near the chik. A close perusal of their statements unquestionably shows they are both highly unscrupulous people.

It, therefore, appears more probable that a meeting at the house of Sitaram was held on 17th December 1951 and Ex. 6 is the resolution of that meeting. I am inclined to believe this part of the statement of Piarey Lal and others.

It also appears that Balgovind was a Congressman of some influence and therefore it was the wish of Congress that he should not oppose the Congress candidate respondent No. 1. Professor Ram Saran (D.W. 6) stated that he was anxious to see that Balgovind withdraws from the contest. He also stated that one of the reasons why he wanted Balgovind to withdraw from the contest was that they would have to work harder. He also admitted that he had recommended the respondent No. 1 in getting Congress Ticket for the said election. In these circumstances it was natural that Professor Ram Saran (P.W. 6) should have tried to persuade Balgovind to withdraw from the contest.

Piarey Lal (P.W. 4) stated that when he came to know that pressure was being put on Balgovind to withdraw from the contest, he sent the letter Ex. 7 to Balgovind on 20th December 1951. Balgovind replied on the back of this letter. In this letter Piarey Lal (P.W. 4) wanted Balgovind to have some talk. It was also mentioned in this letter that his talk with Sahu Jagdish Saran and Mohammad Taqi Hadi was out of place. Balgovind admitted this letter with the qualification that the portion encircled in red in this letter, i.e., "his talk with Sahu Jagdish Saran and Mohammad Taqi Hadi was out of place" was not there when he received it. A perusal of the letter Ex. 7 shows that this portion must have been there and does not appear to have been added afterwards. The reply of Balgovind is Ex. 8. Piarey Lal further on stated that when he went to see Balgovind he did not find him there, but his father Ram Saran Dass met him and he suggested to him that another meeting should be convened in which Balgovind, Sahu Jagdish Saran, Bhukan Saran and others should be invited. He then asked Sita Ram to call such meeting. Sita Ram convened a meeting on 21st September 1951. Ex. 9 is said to be the notice of that meeting. On this notice Ram Saran Dass had noted that he was suffering from eye-sore. Balgovind noted that Bhukan Saran and Sahu Brij Nandan must be called. It had been noted against the name of Bhukan Saran that he had gone to Moradabad. There appears nothing wrong with the statement of Piarey Lal so far. Further on Piarey Lal stated that all the persons named in the list Ex. 9 excepting Balgovind and his father Ram Saran Dass and Bhukan Saran attended that meeting and in that meeting Sahu Jagdish Saran mentioned "as to why they were wasting money as Balgovind would not fight the election with them. Sahu Jagdish Saran also said in that meeting that respondent No. 1 and Balgovind will come to terms within 2 or 3 days and that respondent No. 1 will pay Rs. 1,600 to him (Sahu Jagdish Saran) out of which Rs. 1,300 will be paid to Balgovind and the balance of Rs. 300 will be paid to Bhukan Saran to clear off the account between Balgovind and Bhukan Saran. It was further said by Sahu Jagdish Saran that the two payments to Balgovind and Bhukan Saran would be made after the polling was over." This statement was crux of the case. Sahu Jagdish Saran was examined as P.W. 7 and he denied having given such statement. He admitted his signatures against his name on Ex. 9, but stated that when this slip was brought to him there was no agenda written at its top. The meeting was to be held the same evening at the house of Sita Ram and he was told by the servants of Sita Ram that the meeting was with regard to Provincial Congress Committee Elections. He also said that he did not attend that meeting.

It was contended on behalf of respondent No. 1 that this statement of Sahu Jagdish Saran as proved by Piarey Lal (P.W. 4) was inadmissible in evidence

as no evidence could be led to prove what Sahu Jagdish Saran, a third person, said in the absence of Balgovind and Mohammad Taqi Hadi. The point at issue was as to whether respondent No. 1 paid the bribe to Balgovind respondent No. 4 through Sahu Jagdish Saran. Sahu Jagdish Saran could therefore be called a co-conspirator and his statement relating to the affairs of bribe could be admitted in evidence in view of the provisions of section 10 of the Indian Evidence Act. Sahu Jagdish Saran is said to have made that statement when the conspiracy was still in existence and had not come to an end. On this point the cases reported in A.I.P. 1947 Patna, page 90, and A.I.R. 1948 Privy Council 128 are illuminating. This statement was not meant to contradict or to corroborate the testimony of any witness. I am, therefore, inclined to hold that the statement of Piarey Lal as to what Sahu Jagdish Saran said in the meeting was admissible in evidence.

The point for consideration remains as to whether Sahu Jagdish Saran made such a statement or not. It may be noted here that Sahu Jagdish Saran is the son-in-law of own brother of Ram Saran Dass, father of Balgovind. Thus Balgovind and Sahu Jagdish Saran are closely related to each other. Sahu Jagdish Saran being a Congressman had also sympathies with Balgovind and Mohammad Taqi Hadi respondent No. 1. Sahu Jagdish Saran is a moneyed man of Amroha and is also literate. It appears highly improbable that he made such an incriminating statement in a meeting. Moreover the petitioner (P.W. 3) stated at the bottom of page 3 of his statement that he had come to know on 20th or 22nd December 1951 that Balgovind had withdrawn himself from the contest. He also stated that he had heard that another meeting was held on 21st or 22nd December 1951 after Balgovind had withdrawn from contest. At page 5 bottom of his statement the petitioner stated that it was on the 19th or 20th December that he was informed that Balgovind was being made to withdraw on payment of some money and on 24th or 25th December 1951 he was informed that money had been paid to him, and that he had come to know of the payment by cheque. Sita Ram and Virendra Kumar had given that information to him and he had verified this from other persons also and that he had made enquiries from Sahu Jagdish Saran also. Had that been a fact Sri Ram petitioner must have come to know as to how payment had been made, but it appears from the list of particulars Part I(a) that there was no mention of Bhukan Saran there. The omission from the list of particulars that Rs. 300 were to be paid to Bhukan Saran and Rs. 1,300 to Balgovind shows that neither the petitioner nor his supporters had any knowledge as to why Balgovind withdrew from contest and the allegation that he withdrew from contest on the payment of bribe becomes very doubtful. If the petitioner had come to know that bribe was being paid by means of cheque there appears no reason why he should not have informed the authorities all about it so as to get respondent No. 1 and respondent No. 4 implicated in the offence of bribery. Moreover, the facts as stated by the petitioner are not the facts as stated by his witnesses. From his statement it appears that he had come to know on 21st or 22nd December that Balgovind had withdrawn himself from the contest. But according to Piarey Lal, Sahu Jagdish Saran said in the meeting held in the evening of 21st December 1951 that money shall be paid to Balgovind and then he will withdraw and that respondent No. 1 and Balgovind would come to terms within 2 or 3 days. The statement of the petitioner at the bottom of page 3 of his statement quoted above rather supports the version that Balgovind withdrew from the contest on 21st or 22nd December, as also appears from the letter of Balgovind Ex. A38, dated 21st December 1951, and the telegram of Balgovind Ex. 21, dated 22nd December 1951, and the telegram of Professor Ram Saran Ex. A22, dated 22nd December 1951. Virendra Kumar (P.W. 12) while supporting Piarey Lal on this point stated at page 2 that on further enquiry Sahu Jagdish Saran told them in the meeting of 21st December 1951 that he had settled with Mohammad Taqi Hadi that Rs. 1,600 on account of expenses etc. of Balgovind would be deposited with him and out of that Rs. 1,300 would come to Balgovind and the rest Rs. 300 to Bhukan Saran Vakil towards certain account between Balgovind and Bhukan Saran. From the statement of Piarey Lal it appeared that the matter had not been settled till the evening of 21st December 1951. But from the statement of Virendra Kumar (P.W. 11) it appears that the matter had been settled by that time. Sita Ram (P.W. 13) on page 2 of his statement said that Sahu Jagdish Saran in the meeting of 21st December 1951 had said that they were making attempts uselessly as the matter had almost been settled. This falsifies the statements both of Piarey Lal and Virendra Kumar. I am therefore, inclined to believe that this story that Sahu Jagdish Saran gave such statement in a meeting is an after thought and is not worthy of credit.

Further on Piarey Lal (P.W. 4) stated that he having heard from Sahu Jagdish Saran as to how the wind was blowing sent Mukat Lal servant of Lala Sita Ram to call Ram Saran Dass and Mukat Lal brought a parcha Ex. 12 and said that

Ram Saran Dass would not come to the meeting as he was suffering from eye-sore. This parcha Ex. 12 was filed before this Tribunal on 12th March 1953 by Piarey Lal. This parcha is said to be in the handwriting of Pahlad Dass (P.W. 5) and bears the signatures of Ram Saran Dass. In this parcha it is said that "Balgovind and Bhukan Saran were of one opinion. The matter was 'tehra tin' and it should be finished". Further on it is said in this parcha "as to why advantage be not taken from Muslims. 16 units shall be entrusted to Sahu Sahab and there was no opportunity left for him to go anywhere any more". It is said that this parcha was sent by Ram Saran Dass, father of Balgovind, through a servant of Sita Ram, in the night of 21st December 1951. It may be mentioned here that the petition was filed on 16th May 1952 and respondent No. 1 filed the written-statement on 10th October 1952. It is noteworthy that Piarey Lal was the chief moving spirit in this election petition, but the parcha Ex. 12 was not brought to light till 12th March 1953. In these circumstances I think the parcha Ex. 12 is very suspicious.

It was said for the respondent No. 1 and also by Ram Saran Dass and Balgovind that Pahlad Dass was on bad terms with them as in connection with the theft of the radio of Balgovind the son of Pahlad Dass was suspected and the house of Pahlad Dass was searched and so it was impossible that Ram Saran Dass would have got this parcha Ex. 12 scribed by Pahlad Dass. But Pahlad Dass said that he was on good terms with Ram Saran Dass. From the statement of P.W. 1 Sri Bhagwant Saran, Circle Inspector Amroha, it appears that in March 1950 when he was S.O. Amroha Kotwali, Balgovind had lodged a report of theft of his radio in Amroha Kotwali and in that connection he had searched the house of Jagdish and Raj Narain. Jagdish was the son of Lala Pahlad Dass. This witness also stated that Jagdish and Pahlad Dass live in the same house and he could not recover anything from the house of Pahlad Dass. Pahlad Dass (P.W. 5) in his examination-in-chief stated that he was on cordial terms with Ram Saran Dass. In his cross-examination he stated that his house was not searched after the theft of the radio of Balgovind. It appears that all these people are so unscrupulous that sometime they become friends and at another time enemies. It is in evidence that Balgovind had recommended an application of Pahlad Dass for cement. It is also in evidence that Pahlad Dass had opposed an application of Balgovind for shifting some electric bulb. Ram Saran Dass denied his signatures on Ex. 12. Piarey Lal has proved the signatures of Ram Saran Dass on this parcha. It appears very doubtful that Ram Saran Dass who was such a clever liar would have written such an incriminating parcha at the time when election was to be contested. This parcha by itself was sufficient to ruin the career of his son Balgovind. Had this parcha reached the hands of Piarey Lal on 21st December 1951 I do not think he would have left any stone unturned to bring the matter to the notice of officers and the Congress Parliamentary Board so as to get the respondent No. 1 implicated in a case of bribery and got his candidature invalidated. From the circumstances of the case it appears that this parcha Ex. 12 and the subsequent parcha Ex. 13 were prepared after the election petition. It is quite possible that Ram Saran Dass in order to unseat the respondent No. 1 got this parcha prepared to deny it at the convenient moment. But it is impossible to believe that Ex. 12 was written on 21st December 1951 in the circumstances deposed by Piarey Lal.

Further on Piarey Lal stated that after receiving this parcha he, Sita Ram (P.W. 13), Virendra Kumar (P.W. 11) and Asmat Ullah tried to contact Ram Saran Dass, but could not meet him. After 3 or 4 days they succeeded to find him at his house, but the latter went inside the house on seeing them. Piarey Lal then sent words through Har Saran Dass, brother of Ram Saran Dass. But Ram Saran Dass did not come out and sent a parcha Ex. 13 through his son. This parcha is in Hindi and Piarey Lal stated that it was in the handwriting of Ram Saran Dass and bore his signatures. Ram Saran Dass denied his signatures on Ex. 13 and also that it was in his handwriting. Ram Saran Dass also said that he did not know Hindi, but subsequently he had to admit that he knew Hindi. This parcha runs as follows:—

"Tehra adad hamare tin vakil sahab ke. Pahle vakil sahab ko diye jawenge kyun na faida uthaya jave."

Then the signatures of Ram Saran Dass appear in Hindi. Further on in this very parcha it is noted "Yeh mamla 22nd December 1951 Iswi tai hua. Musalman apni chah se chukte hain ham kiyun chukan." There is no date on this parcha and according to Piarey Lal this parcha was delivered to him by a son of Ram Saran Dass nearabout 25th December 1951. As we have already pointed out above it could not be expected of Ram Saran Dass to have written such an incriminating parcha so as to incriminate himself and his son in a criminal charge. If this parcha were in existence and in the possession of Piarey Lal since December 1951 it would have been brought to light much earlier. This parcha was also filed on

12th March 1953. It was filed by Sita Ram and not by Piarey Lal. There appears no reason as to why when parcha Ex. 12 remained with Piarey Lal this parcha Ex. 13 was kept with Sita Ram. Neither Harsaran Dass nor that young son of Ram Saran Dass who brought this parcha from inside the house were examined. This parcha Ex. 13 also appears to have been fabricated at a later stage to create evidence in this case and no reliance can be placed on it, although it does not appear improbable that it was prepared with the connivance of Ram Saran Dass.

Next is the evidence about the payment of Rs. 1,600. It is not disputed that on 23rd December 1951 respondent No. 1 issued a cheque for Rs. 1,600 on Punjab National Bank at Amroha in favour of Sahu Jagdish Saran. This cheque is numbered DLE/964651 and is Ex. 2. This cheque was against the personal account of Mohammad Taqi Hadi respondent No. 1. On 27th December 1951 the respondent No. 1 drew another cheque (Ex. 3) numbered DLE/964588 for Rs. 1,600 in favour of Sri Mohammad Ehsanulrab. Sahu Jagdish Saran cashed the first cheque Ex. 2 on 27th December 1951 as is admitted by Sahu Jagdish Saran and is also proved from the statement of personal account of Mohammad Taqi Hadi with the Punjab National Bank (Ex. 4). Sahu Jagdish Saran drew a cheque for Rs. 1,300 in favour of Balgovind on 29th January 1950 and another cheque for Rs. 300 in favour of Bhukan Saran Vakil on the same date. Both these cheques were drawn on the Imperial Bank of India and are Exs. 15 and 14 respectively. From the statement of account of Sahu Jagdish Saran Ex. 1 with the Imperial Bank of India, Moradabad, it appears that both these cheques were cashed on 30th January 1952 and debited to the account on 2nd February 1952. Thus it is said for the petitioner that Mohammad Taqi Hadi respondent No. 1 paid Rs. 1,600 through Sahu Jagdish Saran to Balgovind and because Balgovind owed Rs. 300 to Bhukan Saran, therefore out of the sum of Rs. 1,600, Rs. 1,300 were paid to Balgovind by means of a cheque and Rs. 300 were paid to Bhukan Saran by means of another cheque on the same date. On behalf of respondent No. 1 it has been said that for the purpose of propaganda Sri Dao Dayal Khanna, M.L.A., had suggested to the respondent No. 1 that he should purchase a jeep car. Mohammad Taqi Hadi was not possessed of money at that time, so he borrowed it from Sahu Jagdish Saran and gave him a cheque for Rs. 1,600. Sahu Jagdish Saran in his statement stated that he advanced Rs. 1,600 to respondent No. 1 and the latter gave the cheque Ex. 2 for Rs. 1,600 to him. Further on Sahu Jagdish Saran said that Balgovind wanted to borrow Rs. 1,300 from him and as he had no money at that time so he gave a cheque for Rs. 1,300 to Balgovind. Further on he said that he went on pilgrimage on 6th January 1952 and had returned on 28th January 1952. On 5th January 1952 Bhukan Saran gave Rs. 300 to him to purchase a necklace of gold for his daughter from Calcutta which lay in his way as he was going on pilgrimage to Ganga Sagar. He did not purchase necklace at Calcutta as the making charges at Calcutta were very high as compared to those at Moradabad. On his return from pilgrimage he gave a cheque for Rs. 300 to Bhukan Saran to return his money.

The petitioner has failed to prove any connection between Bhukan Saran and Balgovind so far as pecuniary matters are concerned. Bhukan Saran (P.W. 9) was examined and he has stated that he had paid Rs. 300 to Sahu Jagdish Saran for the purchase of necklace from Calcutta. He denied having any money dealings with Balgovind. He admitted that at the end of 1949 there was a balance of only Rs. 2 in his Post Office Savings Bank Account. He also admitted that his income during the month of December 1951 was Rs. 27 and from 1st January 1952 to 6th January 1952 it was only Rs. 6. Bhukan Saran also admitted that he had no written account from which he could show that he gave Rs. 300 to Sahu Jagdish Saran out of the daily cash which he had with him. Thus it does not appear probable that Bhukan Saran was in such affluent circumstances as to give Rs. 300 to Sahu Jagdish Saran on 5th January 1952 for the purchase of a necklace for his daughter. It also follows from this that he could possibly have no money to spend for Balgovind or to lend him any money for his private expenses. The petitioner could not say with certainty as to whether Bhukan Saran had advanced money to Balgovind for his daily expenses or for expenses in connection with the election or had himself incurred expenses on account of Balgovind in his election work. In the absence of any proof as to how the pecuniary relations between Balgovind and Bhukan Saran stood in December 1951, it cannot be said with certainty that Rs. 300 paid to Bhukan Saran by Sahu Jagdish Saran by means of cheque Ex. 14 was on account of expenses incurred by Bhukan Saran for Balgovind. The statement of Sahu Jagdish Saran that Bhukan Saran gave him Rs. 300 could also not be believed. Neither Bhukan Saran nor Sahu Jagdish Saran nor Balgovind nor Ram Saran Dass have filed accounts and they have stated that they do not keep accounts or that they had destroyed their account books. This part of their statement cannot be believed. Sahu Jagdish Saran is a moneyed man and it cannot be expected that he maintained no account of his personal expenses.

In the same way if Bhukan Saran had spent money for Balgovind he should have kept some accounts. He was a Vakil and was required to keep regular accounts for submission before the Income Tax Officer. Balgovind had a controlled shop and had stood for election and in this connection he was required to maintain regular accounts. He has also withheld his accounts. Ram Saran Dass, father of Balgovind, has filed a diary in which expenses incurred are shown though irregularly. The amounts paid to Balgovind off and on are also shown. He had also grocery shop and no regular accounts have been filed by him. Withholding of accounts by all these persons throws a good deal of doubt into all this matter.

Next is the point as to for what purpose the cheque for Rs. 1,600 was drawn by respondent No. 1 in favour of Sahu Jagdish Saran. On behalf of the petitioner it was alleged that the cheque for Rs. 1,600 was drawn by respondent No. 1 in favour of Sahu Jagdish Saran for the purpose of paying this amount to Balgovind as bribe to induce him to withdraw from the contest. While on behalf of respondent No. 1 it has been contended that this cheque was drawn by him in lieu of cash taken by him from Sahu Jagdish Saran for the purpose of purchasing a jeep car. The burden lay heavily on the petitioner to prove that this sum was paid as bribe, and even if the contention of respondent No. 1 did not appear to be correct the petitioner would not be exonerated of the burden which lay initially upon him, as in criminal cases the onus never shifts. The charge of bribery was a criminal charge and the petitioner had to prove it to the hilt. It has already been said above that Balgovind had withdrawn either on the 21st December or on the 22nd December 1951. The cheque Ex. 2 for Rs. 1,600 was given by respondent No. 1 to Sahu Jagdish Saran on 23rd December 1952. It was not a case of the petitioner that the money was first promised to be paid and then it was paid. Therefore even if it be taken that respondent No. 1 gave the cheque Ex. 2 to Sahu Jagdish Saran for being paid to Balgovind it is very doubtful whether this money was paid as bribe in order to secure his withdrawal, because as already shown above Balgovind had already withdrawn and it is proved that Balgovind withdrew his candidature, because the U. P. Congress Parliamentary Board had threatened him with disciplinary action and Professor Ram Saran exerted his influence in persuading Balgovind to withdraw from contest. Balgovind or his father Ram Saran Dass had no pecuniary status. Their only status was that they were members of the Congress and Balgovind was an active member of the Congress and a political sufferer. So that if Balgovind and Ram Saran Dass were to be turned out of the Congress they would be nowhere. It, therefore, appears more probable that Balgovind withdrew his candidature because he was threatened with disciplinary action and was persuaded by Professor Ram Saran M.P. and not because of any bribe or offer of bribe. It was tried to be shown in this connection that respondent No. 1 had no account or had nominal account in the Punjab National Bank on 23rd December 1951. The statement of the current account of respondent No. 1 with the Punjab National Bank (Ex. 4) is on the file and it shows that on 20th December 1951 the opening balance was Rs. 19/7/6. Then on 27th December 1951 Rs. 1,600 were paid to Sahu Jagdish Saran from his account and on the same date Rs. 1,600 were deposited by cash. It is admitted that respondent No. 1 on 27th December 1951 had drawn a cheque for Rs. 1,600 in favour of Mohammad Ehsanul Rab, Secretary of the Consumers' Co-operative Society, Sub-Area (C) of Amroha and most probably this cheque was cashed and deposited in the personal account of respondent No. 1. But it appears that this evidence does not help the petitioner at all. It can rather go to show that respondent No. 1 gave a cheque for Rs. 1,600 to Sahu Jagdish Saran at a time when the balance at his credit in the bank was only Rs. 19/7/6. It is admitted that respondent No. 1 was a moneyed man. He was President of Consumers' Co-operative Society, Sub-Area (C). The entire money of this Co-operative Society was at the disposal of the respondent No. 1. From the statement of accounts of the current account of Consumers' Co-operative Society, Sub-Area (C) with the Punjab National Bank Ltd. (Ex. 5) it appears that Rs. 7,000 were paid to Mohammad Ehsanul Rab on 21st December 1951 and Rs. 6,500 were paid to Mohammad Ehsanul Rab on 22nd December 1951. This Cash Book of Consumers' Co-operative Society, Sub-Area (C) Ex. 48 is also on the record and from this it appears that on 23rd December 1951 balance in hand and with shop manager was Rs. 30,785/1/9 and on 27th December 1951 it was Rs. 25,563/12/6. The respondent No. 1 in his cross-examination admitted that about Rs. 15,000 of this Co-operative Society used to remain with him and in December 1951 or January 1952 he had with him about Rs. 3,000 of the Society. It, therefore, cannot be believed that in the month of December 1951 he had no cash to purchase jeep car and that he was compelled to borrow money from Sahu Jagdish Saran for that purpose. The statement of respondent No. 1 as to the purpose for which he issued the cheque for Rs. 1,600 on 27th December 1951 as President, Consumers' Co-operative Society,

Sub-Area (C) of Amroha is also not at all convincing. From his entire cross-examination it appears that respondent No. 1 has not come with clean hands. It appears that there was something behind which respondent No. 1 and his supporters like Sahu Jagdish Saran and others did not want to disclose. A close perusal of the statement of respondent No. 1 in cross-examination shows that his explanation that he required money for purchasing a jeep on 23rd December 1951 and so he borrowed this amount from Sahu Jagdish Saran was not genuine. Then again the statements of Balgovind and Sahu Jagdish Saran do not prove satisfactorily that Sahu Jagdish Saran had advanced Rs. 1,300 to Balgovind and had issued the cheque for Rs. 1,300 Ex. 5 for that purpose.

The fact that Sahu Jagdish Saran, Balgovind, Ram Saran Dass and respondent No. 1 have withheld their private accounts and gave statements which were on the face of it incorrect might have led us to believe that the respondent No. 1 paid Rs. 1,600 through Sahu Jagdish Saran to Balgovind. But as there is no definite and conclusive evidence it would not be proper to give any such finding. It can reasonably be doubted that respondent No. 1 did make the payment of Rs. 1,600 though not as bribe but to compensate Balgovind as he had withdraw from the contest and had saved him lot of worry and expense.

As it has become doubtful that Rs. 1,600 were advanced by respondent No. 1 to Balgovind on account of bribe for withdrawing from the contest I am of opinion that the issue should be decided in the negative.

Issue No. 6.—There are two points involved in this issue. It was contended that the respondent No. 1 did not show in his return of election expenses the sum of Rs. 1,600 paid by him to respondent No. 4 and secondly that he did not show the sum of Rs. 25 in his election expenses on account of the clerical work done by Gauri Shanker of Amroha. So far as the second item of Rs. 25 goes there is no evidence on the point. As regards the sum of Rs. 1,600 alleged to have been paid to Balgovind I have already found under issue No. 2 that the payment was doubtful. It, therefore, cannot be said that by not including the two aforesaid amounts in the return of election expenses the respondent was guilty of submitting false returns of election expenses.

The issue is, therefore, decided in the negative.

In view of the findings on the above issues I am of opinion that this election petition should fail, but in view of the fact that respondent No. 1 has not come with clean hands and it is only on account of doubts created that the petition is being dismissed, I think the parties should be ordered to bear their own costs.

(Sd.) DATA RAM MISRA, *Member.*

NOTE

While agreeing with my learned brother on the proposed order I wish to add as under:—

Issue No. 5.—It is true that the evidence adduced by the petitioner, as it at present exists on the record, is not sufficient to hold that respondent No. 1 or his agents, or his workers with the connivance of respondent No. 1 or his agents had procured conveyances for the carriage of the electors to the polling stations and back to their residence, but there is one circumstance and an admission of Sri B. D. Jayal, Returning Officer, who was examined by respondent No. 1, which indicate that there is some truth in the petitioner's assertion. In the report Ex. 34 made by Sri Bhagwati Prasad (P.W. 17) in Amroha Kotwali on the day of the polling he cited only Messrs Mukerji and Dutta as his witnesses. These two officers were the Magistrates who were posted at Amroha on the day of the polling to maintain law and order. If a person lodges an incorrect report by way of Peshbandi he generally cites as witnesses persons who are his friends and who would easily agree to give false statements in his support. On the other hand, what Sri Bhagwati Prasad did was to cite two Magistrates as his witnesses. This could not be unless he had reported the matter to them and they had witnessed the occurrence.

Sri B. D. Jayal (D.W. 5) was the Returning Officer of Amroha (west) Constituency and was also the District Election Officer. He was on duty at Amroha on the day of the Polling. The telegram Ex. 33 which Sri Bhagwati Prasad had sent to the District Magistrate on behalf of Om Prakash Sharma, a candidate for the House of People, was sent to Sri Jayal for report. His report is Ex. A24 and is dated 29th January, 1952. The telegram was received by Sri Jayal that very day. His report runs as below:—

"I visited a number of polling stations at Amroha yesterday during the poll and did not come across such cases."

When examined Sri Jayal made a slightly different statement. This discrepancy is not of much importance, but the fact remains that Sri B. D. Jayal had originally made an attempt to conceal the fact that he was told by Sri Mukerji that some complaint regarding the use of conveyances for bringing electors was brought to his (Sri Mukerji's) notice. Sri Jayal deposed that except for the telegram no-one complained to him that the voters were being carried in motor-vehicles, that he met Messrs Mukerji and Dutta at 10-30 or 10-45 A.M. before leaving for the rural area and that he did not recollect having met them after his return from the rural area. The original case of Sri Jayal was, therefore, that Messrs Mukerji and Dutta did not inform him of the complaint that electors were being carried in motor-vehicles. Such an inference can also be drawn from the report Ex. A24 of Sri B. D. Jayal on the telegram Ex. 33. But subsequently Sri Jayal had to admit that when he returned from the rural area in the afternoon Sri Mukerji did say something about such a complaint. The deposition of Sri Jayal on this point is as below:—

"I do not know if any report was lodged in Amroha Kotwali or not, but when I had a talk with Mr. Mukerji in the afternoon when I returned from the rural area he told me that some one had complained to him that certain voters were being carried in a particular vehicle. I do not recollect that Mr. Mukerji had told me that these lady voters were Muslim ladies in burqa. I do not recollect if he told me that the vehicle in which voters were being carried bore the mark of 'Biri' on the outside. Mr. Mohan Mukerji had told me that it was pointed out to him that voters were being carried in a vehicle, and that he was then present at the spot. I do not recollect whether the vehicle referred to by Sri Mukerji was a motor vehicle, rickshaw or a tonga. I did not obtain any report from Mr. Mohan Mukerji when the telegram Ex. 33 was sent to me for report as Mr. Mukerji had told me orally and not in writing and also because I was certain that Mr. Mukerji had not arrived at any decision."

This admission of Sri B. D. Jayal would clearly indicate that some worker, probably Sri Bhagwati Prasad, as is the petitioner's case, had brought the facts to the notice of at least Sri Mohan Mukerji, a Magistrate posted at Amroha to maintain law and order.

There can only be two possibilities, firstly that Sri Mukerji did make an enquiry at the spot, and secondly that he did not pay any attention to the complaint and did not make any such enquiry. In the first case Sri Mukerji could say if the complaint made to him was correct or was without any foundation. He could also disclose the name of the complainant and the charges made. Sri Mukerji should also have submitted a report to the District Magistrate or to the District Election Officer after the polling so that true facts may have been on the record. No papers regarding the complaint to Sri Mukerji or his report are traceable. On the other hand, what appears from the report Ex. A24 of Sri B. D. Jayal is that even though he knew that a complaint was made to Sri Mukerji, no attempt was made to obtain full details from him (Sri Mukerji). Thus an attempt was made to keep these facts concealed. In the other case, namely, if Sri Mukerji did not make any enquiry at the spot, his attitude cannot be commended. I feel that it was the duty of a public servant to make an enquiry immediately to ascertain if the complaint being made is correct or not so that full justice may be done in the case and the culprits, if any, may not escape unpunished.

The reason why the petitioner did not examine Sri Mohan Mukerji, even though he was cited as a witness, is not far to seek. No paper regarding the complaint or the enquiry made by Sri Mohan Mukerji was traceable, and it is evident that Sri Mukerji would not have liked to make a statement unless papers were shown to him. Much weight cannot, therefore, be attached to the fact that the petitioner did not examine Sri Mohan Mukerji.

On consideration of these circumstances I am inclined to be of opinion that there is every possibility of the complaint of the petitioner regarding the workers of the respondent No. 1 having procured motor-vehicles for the carriage of electors being true, but on the basis of the evidence on record no finding in his favour can be given. Had the Magistrates on duty and also Sri B. D. Jayal, the then Returning Officer, taken some interest in the complaint, true facts could be brought on the record and it could then be possible to say with certainty if the petitioner's complaint was proved or not. In this connection I would further observe that it appears to the Tribunal that no proper record of complaints received by the different Election officers is maintained. Maintenance of such a register would facilitate an enquiry by the Tribunal or by any higher authority.

The Election Commission may consider prescribing a register of complaints received by the Polling Officer, Returning Officer, District Election Officer and the District Magistrate, or to lay down that the Election officers will seal such complaints in a separate envelope and will note at the top the details of the complaint so that it may not be difficult to trace out if any complaint had been made and if so what was the nature of such complaints.

Issue No. 7.—It appears that less polling booths were provided in the rural area on population basis and for the rural area there was no special facility for lady electors in that no polling booth was reserved for such voters. On the other hand, for the urban area, where there was a Municipal Board, Notified Area or a Town Area, certain booths at a polling station were reserved for lady electors. The learned counsel for the petitioner has urged that this would amount to a discrimination on the ground of the place of birth and consequently would be repugnant to Article 15(1) of the Constitution of India. Our attention has also been drawn to the observations of Patanjali Sastri C. J. in *Kathi Raning Rawat versus State of Saurashtra*, (1952) S.C.R. 435, quoted at page 12 under the heading *Equality before Law Discriminatory Legislation, Cases on the Law of the Constitution of India*, by Om Prakash Agarwala, 1952 Edition. These observations are as below:—

“All legislative differentiation is not necessarily discriminatory. In fact, the word “discrimination” does not occur in Article 14. The expression “discriminate against” is used in Article 15(1) and Article 16(2) and it means according to the Oxford Dictionary” to make an adverse distinction with regard to; to distinguish unfavourably from others. “Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this contest. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to these articles.”

Thus the most important point is if there was any unfavourable bias against the rural area and in favour of urban area. If there was no such unfavourable bias, it cannot be said that there was discrimination as contemplated by Article 15 of the Constitution of India. Sri B. D. Jayal was cross-examined on this point and he has deposed that the number of polling booths was fixed on the basis of some formula based upon past experience. It will be too much to expect the Election authorities to apply the same rule to the urban and rural areas. If the polling booths are fixed on population basis irrespective of the past experience, a very large election Staff would be required and it may happen that at many polling stations, specially in the rural areas, there may be very few electors turning up to cast their votes. In other words, if the same rule is applied to the urban and rural areas, the public money would be wasted without any benefit to the electors.

As regards the lady electors, the experience of the Election authorities appears to have been that ladies of the urban area are more inclined to cast their votes than of the rural area. The reason for such an inference is also not far to seek. Ladies in the urban area are generally more educated and willing to go to the polling stations. Places of residence are also not at a distance and the ladies are not put to much inconvenience if they decide and they do go to polling station to cast their votes. On the other hand, in the rural area the ladies are illiterate and will have to cover long distances to reach the polling stations. I am, therefore, of opinion that there was no discrimination as contemplated by Article 15 when the Election authorities fixed a greater number of polling booths in the urban area and also when they granted special facilities to lady electors in the urban area and not in the rural area.

Even if it be presumed that there was a discrimination Article 15 of the Constitution of India was not complied with, the petition cannot be allowed as under section 100(2)(c) of the Representation of the People Act, 1951, the petitioner has to show that the result of the election has been materially effected as a result of the non-compliance with the provisions of the Constitution. The learned counsel for the petitioner has urged that after the petitioner has proved that there was a non-compliance of the Constitution of India, the burden will lie upon respondent No. 1 to show that the result of the Election had not been materially effected. In other words, the suggestion is that unless respondent No. 1 proves that the result of the Election had not been materially effected, the Tribunal should draw a presumption that the result of the Election had been materially effected as a result of the non-compliance with the provisions of the

Constitution. Our attention was drawn to certain Case Law, specially to the law as followed in England. In my opinion this case Law cannot be applicable when the wordings of section 100(2)(c) of the Representation of the People Act, 1951, are quite clear. It runs as below:—

“Subject to the provisions of sub-section (3) if the Tribunal is of opinion:—

(c) that the result of the election has been materially effected.....by non-compliance with the provisions of the Constitution.....”

Thus two findings have to be given by the Tribunal—firstly, that there was non-compliance with the provisions of the Constitution, and secondly, that the result of the election has been materially effected. The burden of proof always lies upon that party which wants the Tribunal to accept its contention. In other words, the burden to prove both these points would lie upon the petitioner and not upon the Respondent No. 1.

In this connection it may also be observed that there is material on the record to show that the result of the Election had not been materially effected as a result of not providing special facilities to lady electors in the rural area. Sri Ram petitioner has alleged in his examination-in-chief that as the polling booths in rural areas were not sufficient and no facility was provided for women voters many of them went away without casting their votes; but in cross-examination he had to admit that neither did he nor did his agents complain in writing to the Presiding Officers that due to shortage of polling booths the voters were going away without casting their votes. It can, therefore, be presumed that none of the electors left the polling stations without casting their votes. In other words, all the electors including ladies who went to the polling stations did cast their votes and were not in any way adversely effected by the lesser number of polling booths or by no special facilities being given to the lady electors in the rural area.

The learned counsel for the petitioner wants the Tribunal to infer from the report Ex. 35 that there was a heavy rush of electors at least at one polling station and that the electors of this area must have gone away without casting their votes on account of the discrimination shown between the rural and the urban area. I am afraid, such an inference cannot be drawn from the police report Ex. 35. S. I. S. B. L. Tyagi who had sent this report was not examined. There is nothing on the record to indicate the time when there was heavy polling at Pagharupur polling station. It is possible that the rush was heavy in the morning or at noon and not at the end of the polling. If the polling at the end of the day was not heavy, the electors could not go away without casting their votes. Further, under the provisions of the Representation of the People Act all the electors who had entered the polling station before the time fixed for the close of the polling could cast their votes, even if the polling had to be continued beyond the time fixed.

I am, therefore, of opinion that there was no non-compliance of Article 15 of the Constitution of India, and even if this Article had been violated the result of the Election had not been materially effected.

Issue No. 2.—This is the main issue in the case. The petitioner's case, as it at present stands, is that Balgovind respondent No. 4 withdrew from the contest for Election to the U.P. Legislative Assembly when respondent No. 1 offered to him a sum of Rs. 1,600; that this amount was paid by cheque to Sahu Jagdish Saran (P.W. 7) to be kept in deposit and to be disbursed to Balgovind respondent No. 4 after the polling in the manner that Rs. 1,300 were to be paid to him while the remaining Rs. 300 to Bhookan Saran on account of some accounts standing between Balgovind and Bhookan Saran; and that Rs. 1,300 were paid to Balgovind and Rs. 300 to Bhookan Saran on 29th January 1952, by two different cheques. It is also the petitioner's case that a meeting was held on 17th December 1951, in which resolution Ex. 6 was passed selecting Balgovind respondent No. 4 as the sole candidate to oppose the Congress Candidate, namely, respondent No. 1, and that in the subsequent meeting held on 21st December 1951 Sahu Jagdish Saran mentioned that there was no use in putting pressure upon Balgovind as he had agreed or would agree to withdraw from the contest on receipt of Rs. 1,600 in the manner indicated above. Respondent No. 1 has denied all these allegations, and his case is that he had given the cheque for Rs. 1,600 to Sahu Jagdish Saran on 23rd December 1951, in lieu of Rs. 1,600 which he had borrowed in cash for purchasing a jeep at Moradabad.

Before commenting on the merits of the evidence adduced by the parties it would be proper to consider what standard of evidence should be expected in

the present proceedings, whether the evidence should be such as is expected in criminal trials or a decision should be taken on the merits as is done in civil cases. My brother, Misra, has already referred to most of the decisions of the Election Commissioners or Tribunals on the point. The view of almost all the Tribunals is that the charge of bribery is a serious one and the same kind of evidence is required to prove such a charge in proceedings arising out of an election petition, as is necessary in criminal trials. In this note I will simply refer to certain English Cases which have been brought to our notice on behalf of the petitioner. Our attention was drawn to the commentary at page 6 of the Law of Evidence by Philipson, Fourth Edition, and to two cases, *Cooper versus Slade*, and *Magee versus Mark*, referred to therein. The reports of these two cases were not at all referred to us and it is difficult to say if the facts of these cases were similar to the present one or not. Without looking into the ruling itself it will not be proper to rely upon it. However, from the Law of Evidence by Philipson it appears that the view in England and America is divided, but the weight of opinion is that in actions for penalties under the Corrupt Practices Act, 1854, the charge of bribery may be proved as in civil cases by mere preponderance of probability. Similarly, in para. 560 at page 206 of the Law of England by Halsbury, Volume XII, 1910 Edition, it was observed as below:—

“Bribery, however, may be implied from the Circumstances of the case, and the court is not bound by the strict practice applicable to criminal cases. The court strips the proceeding in each case of every colour, every dress, and every shape to discover its real and true nature.”

In this very paragraph it was observed that clear and unequivocal proof was required before the charge of bribery could be held to have been established, and that suspicion was not sufficient and the confession of the person alleged to have been bribed was not conclusive.

Even if it be supposed that the majority view in England and America is that the rules of the standard of evidence to prove the charge of bribery in election proceedings is not the same as in criminal trials, the courts in those countries are also of opinion that clear and unequivocal proof is required before a charge of bribery will be held to have been established and that suspicion, how-so-ever strong it may be, is not sufficient to prove such a charge. The evidence has to be, in one way, of a conclusive nature. In my opinion, therefore, the petitioner will have to prove, may be by circumstantial evidence, that the money was advanced and was so advanced for no purpose other than that of bribery.

The learned counsel for the petitioner had also invited our attention to the case, *Tricumdas Dwarkadas versus Sir Vasantarao A. Dabholkar* and two others, reported at page 40 of the Indian Election Petitions by Jagat Narain, Volume IV (1930—33), but the view taken in this case is not different to what has been indicated above. This would appear from the third paragraph at page 47, which is as below:—

“it is argued that this inquiry is not in the nature of the civil inquiry, but a penal or at least a quasi criminal inquiry, and that therefore the evidence should be considered as at a criminal trial, and if there is a doubt in the Commissioner's minds as to the proof of the charge, the benefit of the doubt should be given to them. We are aware that under rule 37 the procedure applicable to the inquiry is to be as nearly as may be, in accordance with that applicable to the trial of suits under the C.P.C. 1908, but that the inquiry partakes also of the nature of one for the trial of an offence cannot be denied—See *Grant versus Overseers of Pagham*, (1877) 3 C.P.C., page 100. The standard of proof required to bring home the alleged corrupt practices to the Respondents should be determined accordingly.”

It thus appears that the view taken in this case was also that in a quasi criminal enquiry almost the same standard of proof was required as in criminal trials.

The case of Calcutta High Court reported in 165 Indian Cases (1936) 481 *Nasiruddin Ahmad versus Haji Mahammad Yusuf*, cannot also help the petitioner. Reliance has been placed upon the head note as contained in column (2) of page 489. The view that the trial of an election petition is not governed by the rules applicable to a criminal case cannot be challenged. This remark however, cannot be interpreted to mean that the standard of proof required to prove a charge of bribery in the trial of an Election petition has to be quite different to that in criminal trials. What was argued in this case on behalf of the respondent was that the allegations were in the nature of criminal charges and must be proved with the same strictness and that a corrupt mind of an agent was not sufficient to justify

such a finding against the candidate. In other words, it was urged on behalf of the respondent that it could not be inferred from the guilty knowledge of the agent that the candidate also had such a guilty or corrupt mind. It is true that in criminal trials one has to prove the guilty mind or the intention of the accused person, but such a proof is not necessary in the trial of election petitions, as it is clearly provided that a returned candidate would be disqualified if he or his agents committed a corrupt act. It is in case of any other person that it has to be proved that the corrupt act was done in connivance with the returned candidate or his agent.

In my opinion, therefore, the standard of proof required in the trial of election petitions to prove any corrupt practice is the same as in criminal trials. In any case, it will never be safe to declare the returned candidate to be guilty of a corrupt practice on the basis of suspicions, how-so-ever, strong they may be. There must always be strong evidence, whether direct or circumstantial, to prove the charge, and if there is any doubt as to the corrupt practice an inference must always be drawn in favour of the returned candidate and he would be entitled to its benefit.

In cases of an offence of bribery it is difficult in majority of the cases for the parties to lead direct evidence. Such an offence is usually not committed in the public and all the facts are not in the notice of the candidates standing for election. Direct evidence can be had only where a candidate or his agent committed the mistake to send something in writing, or unless a trap is laid to catch the guilty person or the money is passed in the presence of persons not known to the giver or the acceptor of the bribe. In other words, in majority of cases there will always be circumstantial evidence and it will have to be judged from such evidence if it is proved that a bribe had been paid or offered. In the present case the persons connected with the payment of the alleged bribe are Congressmen. The money is said to have been paid by Mohammad Taqi Hadi, respondent No. 1, and to have been kept in deposit with Sahu Jagdish Saran, to be paid to Balgovind respondent No. 4 and to Bhookan Saran to settle certain accounts between Balgovind and Bhookan Saran after the polling. Mohammad Taqi Hadi, Sahu Jagdish Saran, Balgovind and Bhookan Saran are Congressmen and belong to the same party. Such persons would never agree to give evidence before the Tribunal as to the Commission of the offence. Thus the only evidence which the petitioner could produce would be of a circumstantial nature. In order that complete evidence of all the witnesses may be on the record, the Tribunal had directed the petitioner to secure the appearance of all the persons connected with the transaction. It was in compliance with this order that the petitioner not only summoned these persons but examined them also. There was the implied permission of the Tribunal to the petitioner to cross-examine these witnesses also so that full facts may come on the record. These witnesses were thus examined by the petitioner and were also cross-examined to show that they were not making a true statement. As these witnesses have not supported the petitioner, their earlier statements unless properly proved otherwise, cannot be considered in evidence. But it will not be wrong to consider their statements as an explanation of these witnesses and also of Mohammad Taqi Hadi as to the alleged transaction, i.e., the issue of the cheque and the alleged meetings of the 17th and 21st of December 1951.

It has been strongly urged on behalf of respondent No. 1 that Balgovind respondent had withdrawn from the contest not as a result of the alleged offer but due to the pressure put by the U.P. Congress Committee and by Professor Ram Saran. It was also urged that Balgovind being an old congressman and depending for his popularity upon the Congress support could not disobey the directions of the U.P. Congress Committee, and consequently withdrew from the contest under the influence of the U.P. Congress Committee and of Professor Ram Saran. I am afraid, this cannot be the only inference. Balgovind like other respondents, Nos. 3 to 7, had filed the nomination paper as Independent Candidate after it was decided that the Congress Ticket for the U.P. Legislative Assembly from Amroha (west) Constituency would be given to Mohammad Taqi Hadi. When Balgovind did not withdraw his candidature, the U.P. Congress Committee sent the telegram, dated 5th December 1951 (Ex. A4) calling upon him to withdraw by the 8th of December 1951. The telegram was followed by the letter Ex. A5, dated 14th December 1951, suspending Balgovind from the membership of the Congress and at the same time giving him an opportunity to show cause by 22nd December 1951 why departmental action be not taken against him. It was on 21st December 1951, that Balgovind is said to have sent the letter Ex. A38 to the Congress Committee indicating his withdrawal from the contest. This letter was followed by the telegram Ex. A21, dated 22nd December 1951. Professor Ram Saran also sent the telegram Ex. A22 recommending the case of Balgovind for not taking departmental action against him. It, therefore, appears that Balgovind expressed his decision to withdraw from the contest on 21st or 22nd of December

1951. This withdrawal could not be the result of only the strong attitude taken by the U.P. Congress Committee or due to Balgovind being a pucca Congressman and in having no desire to disobey the directions of the Congress Command. If it were so, Balgovind should have withdrawn from the contest by the 8th of December 1951, or as soon as he received the letter Ex. A20. On the other hand, he waited till 21st or 22nd of December 1951. This delay in communicating the withdrawal from the contest must be due to the fact that there was something else in the mind of Balgovind.

In this connection a reference may be made to a statement of Professor Ram Saran made in his cross-examination, Professor Ram Saran denied having suggested to Mohammad Taqi Hadi to pay the expenses already incurred by Balgovind to him; but when he was asked if he had sent a letter to Bhookan Saran to secure the withdrawal of Balgovind even on payment of some money he (Professor Ram Saran) gave an evasive reply. What he has stated is that he did not remember if he had sent such a letter. If it was not in the mind of the Congress Leaders of Amroha or of district Moradabad to secure the withdrawal of Balgovind on payment of some money and Professor Ram Saran had not sent such a letter to Bhookan Saran, he (Professor Ram Saran) could deny this suggestion put to him in his cross-examination. It cannot, therefore be said that Balgovind had not and did not in fact withdraw from the contest when it was settled that he would be paid the expenses already incurred by him in the election.

As already indicated above, it is admitted by respondent No. 1 that he has given cheque No. DLE 964601, dated 23rd December 1951, for Rs. 1,600 (Ex. 2) to Sahu Jagdish Saran, and that on 29th January 1952, Sahu Jagdish Saran issued two cheques, Ex. 23 to Balgovind for Rs. 1,300 and Ex. 22 to Bhookan Saran for Rs. 300. Both these cheques were cashed on 30th January 1952 and were debited to the account of Sahu Jagdish Saran on 2nd February 1952. The delay in debiting the amount of the two cheques was due to the fact that there was only a Pay Office of the Imperial Bank of India at Amroha and all the accounts were maintained at Moradabad. It further appears that cheque Ex. 2 for Rs. 1,600 was cashed on 27th December 1951 and on that very day a sum of Rs. 1,600 was deposited in the personal account of Mohammad Taqi Hadi with the Punjab National Bank either in cash or per cheque Ex. 3. The balance in the personal account of Mohammad Taqi Hadi before 27th December 1951 and at the end of that day was Rs. 19/7/6. The case of the petitioner and of Mohammad Taqi Hadi with regard to these cheques has already been indicated above and will be commented upon in detail subsequently. It may here be noted that all these persons, namely, Mohammad Taqi Hadi, Sahu Jagdish Saran, Bhookan Saran and Balgovind and also his father Ram Saran Das have withheld their accounts. Mohammad Taqi Hadi wants us to believe that even though his father was a good manager and maintained proper accounts, such accounts were not available on account of the shifting of the records from one room to the other during Moharram and the fact that his father was not keeping good health for about three years and consequently could not supervise the maintenance of the accounts. This explanation does not at all appeal to me. Sahu Jagdish Saran is one of the prosperous persons of Amroha. He has produced his registers with regard to immovable properties other than zamindari properties, which he has invariably to file before the Income Tax Officer in connection with the assessment of income tax. Such registers could not be withheld. Sahu Jagdish Saran says that he does not maintain accounts of his personal income and expenses. This cannot be expected from a highly placed person like Sahu Jagdish Saran, who would invariably maintain accounts of all his expenses. Bhookan Saran is a Vakil. Considering his income from the legal profession and also from shops and houses, it may be that he did not maintain accounts of his personal expenses. But a suitable explanation is not forthcoming from him also as to how he could spend Rs. 300 towards the purchase of a necklace for his daughter when her marriage or her engagement was not under contemplation. Balgovind and his father Ram Saran Das have not produced accounts. The explanation given by Balgovind is that the registers of his control shop were destroyed as soon as the commodities were decontrolled. The decontrol took place only a few months before the recording of the evidence and no-one could be in a hurry to destroy the registers of the shop so quickly. The only inference which can be drawn from their conduct is that Balgovind and Ram Saran Das have intentionally withheld their registers so that it may not offer that Rs. 1,300 were received on some account other than of the shop. The peculiarity of the present case, therefore, is that the parties connected with the alleged transaction have withheld their accounts. This circumstance can be used against respondent No. 1. I now come to the explanation given by Mohammad Taqi Hadi, respondent No. 1, with regard to cheque Ex. 2 for Rs. 1,600 given to Sahu Jagdish Saran. He says that he and also his father were short of funds on the evening of the 23rd of December 1951 and that when he borrowed Rs. 1,600 from Sahu Jagdish Saran

for the purchase of a jeep he issued this cheque. This explanation does not at all appeal to me. It was suggested on behalf of respondent No. 1 that he was such a conscientious person that he did not wish to utilise the funds of the Consumers' Co-operative Society, Sub Area (c), of whose he was a President, towards his own personal expenses including the election expenses. This suggestion is falsified by certain admissions of Mohammad Taqi Hadi himself. He admits that on the 15th of April 1953, the Assistant Registrar of Co-operative Societies asked him to deposit with the Bank of cash of the Consumers' Co-operative Society; and that he deposited Rs. 8,000 in the Bank but Rs. 8,000 were still with him. This admission would clearly indicate that on the 15th of April 1953 respondent No. 1 could not deposit the total cash of the Consumers' Co-operative Society even though called upon by the Assistant Registrar. The amount still remaining with respondent No. 1 was about Rs. 8,000 which was not a petty amount. This sum must have been appropriated by respondent No. 1 for his own personal expenses. The registers of the Consumers' Co-operative Society, Sub Area (C), of the month of May 1953 were not produced before us and it is difficult to say if the cash balance on the 15th of April 1953 was only Rs. 16,000 or was much more. Even if the figures given by respondent No. 1 are accepted, it is clear that he had appropriated for himself a sum of Rs. 8,000 of the Consumers' Co-operative Society. It further appears from the registers of the Consumers' Co-operative Society that on the 23rd of December 1951 there was a cash balance of Rs. 30,785/1/9 with the office-bearers of the Co-operative Society or with the shop managers, *vide* Cash Book Ex. 48, and that the total cash with the shop managers, on that date was only Rs. 7,502/7/-, *vide* DPR Consolidation Register-B-Cash, Ex. 47. In other words, on 23rd December 1951 Mohammad Taqi Hadi or the Secretary or the Accountant of the Co-operative Society had with them a sum of Rs. 23,282/10/9. The security taken from the Secretary or the Accountant was very nominal. It was only of Rs. 250. They could not, therefore, have retained with them such a huge amount. It can, therefore, be inferred that respondent No. 1 had with him on 23rd December 1951 a sum exceeding Rs. 20,000 of the Co-operative Society. A person who was found to have appropriated for his own use a sum of about Rs. 8,000 on 15th April 1953, would have appropriated the funds of the Consumers' Co-operative Society for his own use whenever an opportunity arose. In other words, if respondent No. 1 was short of funds, he would have had no hesitation in appropriating a sum of Rs. 1,600 from the cash of the Co-operative Society with him on 23rd December 1951. Respondent No. 1 was cross-examined at length with regard to the registers and the accounts of the Consumers' Co-operative Society. His statement is full of contradictions and is of an unsatisfactory nature. For the purposes of this order it is not necessary to refer to these statements.

Even otherwise the explanation of respondent No. 1 that he and his father could not spare Rs. 1,600 on 23rd December 1951 cannot be believed. As already held above, respondent No. 1 has intentionally withheld his accounts which could show what amount in cash was with him or with his father that evening.

The statement of Mohammad Taqi Hadi is that on 23rd December 1951 his father had no money with him but promised to arrange Rs. 1,600 within 2 or 3 days, and that it was for this reason that he borrowed Rs. 1,600 from Sahu Jagdish Saran and asked him to cash the cheque after 2 or 3 days. Respondent No. 1 also stated that on 27th December 1951 his father gave money out of which he deposited Rs. 1,600 in his account with the Punjab National Bank and that out of the balance he purchased a jeep from Rampur. In this connection he also deposed as below:—

"My father had some money with him which he had reserved for pilgrimage to Haj. He did not want to give anything out of this money, but on 27th December 1951 my father gave me a part of this money reserved for Haj pilgrimage and also gave money which he had received from the villages. About Rs. 4,000 were received from the villages."

The jeep (second-hand) which respondent No. 1 had purchased from Rampur cost about Rs. 4,600. In other words, his father had reserved for pilgrimage to Haj a sum exceeding Rs. 1,600. Respondent No. 1 has stated in one breath that his father was ill for three years and consequently could not supervise the accounts and accepted whatever money was given by his Karinda; but at another place asserts that his father had reserved money for pilgrimage to Haj. The two versions are self contradictory. If his father was so ill that he could not supervise the management of the Zamindari property, he could not have under contemplation to leave for pilgrimage to Haj within the period of the election or within a few days of the polling. Even if his father had in mind to go for pilgrimage, he would have immediately spared money for the purchase of a jeep knowing that money would come from the Zamindari and he would be able to save money for the pilgrimage.

Mohammad Taqi Hadi was also cross-examined with regard to the price of the jeep. If he is to be believed, though he had made enquiries about the availability of jeeps, no one told him nor did he enquire what was the market value of a secondhand jeep. This is too good to be true. Within a few days Mohammad Taqi Hadi purchased a secondhand jeep for Rs. 4,600. It can, therefore, be inferred that he must have known, at least the driver on whom he placed reliance and whom he took to Moradabad would have known, that no secondhand jeep in a serviceable condition could be available for a sum of Rs. 1,600. Another statement of Mohammad Taqi Hadi also makes me think that his is a cock and bull story. The jeep available at Moradabad was not at all tried and as soon as the driver opened the bonnet he formed an opinion that the jeep was not in a good condition. Such an opinion could not have been formed unless important parts of the engine of the jeep were missing. Dao Dayal Khanna or any sensible man could never have advised respondent No. 1 to purchase a jeep of such a condition which could not be put into use at once except after big repairs which would have taken a considerable time. The polling was to take place within about a month and consequently the jeep, if it was to be used for election purposes, was to be available immediately and not after some time.

From the evidence of respondent No. 1 it further appears that he had hired a Ford Car and had paid Rs. 1,000 as advance only on 23rd December 1951. It is difficult to believe that the Ford Car would have gone out of order that very day when the advance was paid and when the cheque for Rs. 1,600 was given to Sahu Jagdish Saran. It is also difficult to believe that the Ford Car for which respondent No. 1 paid Rs. 1,000 and also undertook to bear all the expenses of repairs would have been unsuitable for Kachcha roads which would have had to be covered during most of the canvassing.

The conduct of Sahu Jagdish Saran in handling the cheque is also of a suspicious nature. According to him, he himself cashed the cheque and then deposited the amount in his account with the Imperial Bank of India. If the present was an ordinary transaction and the amount was to be credited to the current account with the Imperial Bank of India, Sahu Jagdish Saran could easily send the cheque to the Imperial Bank of India for being cashed and credited to his account. On the other hand what he did was to personally go to the Punjab National Bank and thereafter to deposit the money with the Imperial Bank of India. There is another suspicious character of this cheque. It was not issued from the personal Cheque Book of respondent No. 1 or from the cheque Book pertaining to the personal account of Mr. Jarchvi. The cheque Ex. 2 was taken out of the Cheque Book of another Consumers' Co-operative Society of whose office-bearer Sri Jorchvi was. Mohammad Taqi Hadi admits that except for this occasion he did not issue a cheque while borrowing money for a short period. The explanation given by him is that people are reluctant to advance money for election purposes. This explanation does not appeal to me.

In this connection a reference may be made to a statement of Mohammad Taqi Hadi, respondent No. 1, that it was on 29th December 1951 that he went to Rampur to enquire from Hori Lal Varma, Chief Secretary of His Highness the Nawab of Rampur if any jeep was available, and that it was 4 or 5 days earlier that he had asked Sri Verma to search a jeep for him. Mohammad Taqi Hadi says that he had made such a request to Hori Lal Varma when he had paid a visit to Amroha. This statement will indicate that on the 23rd or 24th of December 1951 he (respondent No. 1) was at Amroha and not at Moradabad or in village Sirsi as deposed by him. This statement was made on 21st May 1953, and on 22nd May 1953 the witness changed his statement by saying that what he had actually meant was that he had met Hori Lal Varma 4 or 5 days before the visit of Dao Dayal Khanna to Amroha in other words, on the 18th or the 19th of December 1951. The practice of the Tribunal had been to give Carbon copies of the statements of witnesses to the parties on the very day the evidence was recorded even though these very copies were subsequently issued after correction as certified copies. Respondent No. 1 raised no objection when he signed his statement on 21st May 1953 after going through it. The objection was made on the following day, i.e. on 22nd May 1953, when he must have realised that he had given an incriminating statement.

The above admissions of respondent No. 1 himself and the circumstances indicated above clearly indicate that on 23rd December 1951 Mohammad Taqi Hadi respondent No. 1 and his father had with them at least Rs. 1,600. There could, therefore, be no cause for respondent No. 1 to borrow Rs. 1,600 from Sahu Jagdish Saran. In other words, cheque Ex. 2 for Rs. 1,600 could not be issued in the manner suggested by respondent No. 1, by Sahu Jagdish Saran or by Dao Dayal Khanna. It may here be noted that all these persons are Congressmen and belong to the same group.

As regards cheque Ex. 22 for Rs. 300 given to Bhookan Saran, Sahu Jagdish Saran and Bhookan Saran have made Contradictory Statements. They admit that the cheque was issued on 29th January 1952 and was cashed by Bhookan Saran on 30th January 1952. Their case is that before Sahu Jagdish Saran left for pilgrimage Bhookan Saran gave Rs. 300 for the purchase of a necklace for his daughter from Calcutta. Sahu Jagdish Saran says that as the making charges of ornaments were high at Calcutta he did not purchase the necklace and that as all the money with him had been spent by the time he returned from the pilgrimage he issued the cheque for Rs. 300 to Bhookan Saran. Sahu Jagdish Saran also stated that Bhookan Saran had not at all told him of what design the necklace should be. If Sahu Jagdish Saran is to be believed, he was simply told that the necklace to be purchased should cost upto about Rs. 300. On the other hand, Bhookan Saran says that his daughter had liked the design of a necklace which a relation of Sahu Jagdish Saran was wearing and that he had asked Sahu Jagdish Saran to purchase a necklace of that design. The two witnesses have thus made contradictory statements. Sahu Jagdish Saran and Bhookan Saran are fast friends and as Bhookan Saran says, they used to meet each other at the residence of either almost every evening. When such a close friendship existed, Sahu Jagdish Saran would not have felt to be in such a hurry as to return the money at once, nor would Bhookan Saran have liked to have a cheque when Sahu Jagdish Saran did not have the money with him, specially when he had returned from the pilgrimage. Bhookan Saran does not also appear to be of such a status that he could spare Rs. 300 for the purchase of a necklace for his daughter who was young and there was no likelihood of her wedding taking place in the near future.

Both Balgovind and his father, Ram Saran Das, have withheld the accounts of the shop. Balgovind says that he had borrowed Rs. 1,300 for making purchases for the shop. This cannot be believed, specially because both Balgovind and Ram Saran Das have made a statement full of lies. Balgovind admits that he was selling commodities on payment of cash and not on credit. The sale proceeds would always have exceeded the amount necessary for making purchases. He could not, therefore, require money for making subsequent purchases. Further, from the accounts, Exs. A10 and A12 of Nagarmal Shadi Ram and Abdul Aziz Abdul Halim to whom payments are said to have been made on receipt of the cheque, it is clear that these firms always allowed a credit to Balgovind who never made payment on the dates of purchases. Even if the Permit Ex. A11 was valid upto 31st January 1952 and there would have been difficulties in having it extended, Balgovind could purchase commodities without immediately paying for them. Had Balgovind and Ram Saran Das produced the account books of their shop, it could be ascertained what cash they had in hand with them. If the cash in hand was very nominal they could be believed and not otherwise. Balgovind was sitting outside the court room by the side of the chik when Sahu Jagdish Saran was being examined but when this fact was brought to the notice of the Tribunal and Balgovind was called inside the court he denied this fact. Balgovind says that he had withdrawn from contest before the 15th of December 1951 and had issued appeal Ex. 16 before that date. Ram Saran Das has made an almost similar statement, but both these witnesses are contradicted by Professor Ram Saran and Mohammad Taqi Hadi. The other incorrect statements made by the two witnesses have already been commented upon by my brother, Misra, and need not be repeated in this note.

In other words, Mohammad Taqi Hadi, Sahu Jagdish Saran, Bhookan Saran, Balgovind and Ram Saran Das have intentionally withheld their account books and have made false statements with regard to the different cheques issued by them or in their favour. This circumstance can be used against respondent No. 1, and would conclusively prove the charge of bribery if there is other evidence on the record which can show that the bribe had been paid.

The oral evidence adduced by the petitioner can be divided in two categories—one of Ram Murti (P.W. 12) who deposed about facts which happened outside the Punjab National Bank when the cheque Ex. 2 was cashed and the other, of the evidence of the other witnesses who had attended the meetings of the 17th and 21st of December 1951, said to have been convened by Sita Ram at his house.

The witnesses examined by the petitioner and who give evidence regarding the meetings of the 17th and 21st of December are the petitioner himself (P.W. 3), Pyarey Lal (P.W. 4), Phalad Das (P.W. 5), Ram Saran Das (P.W. 6), Sahu Jagdish Saran (P.W. 7), Balgovind (P.W. 8), Bhookan Saran (P.W. 9), Virendra Kumar (P.W. 11) and Sita Ram (P.W. 13). Ram Saran Das, Sahu Jagdish Saran, Balgovind and Bhookan Saran are persons who are clearly hostile to the petitioner and have made a whole-hearted attempt to help respondent No. 1. These witnesses deny that the cheques were in any way connected with the payment of bribe to

Balgovind. Their statements as made before the Tribunal cannot, therefore, help the petitioner. The other witnesses have not only proved the documents connected with these two meetings but also deposed about certain statements made by Sahu Jagdish Saran in the meeting of the 21st of December 1951. It has been strongly urged on behalf of respondent No. 1 that the evidence of these witnesses with regard to the statement of Sahu Jagdish Saran said to be made in the above meeting is inadmissible in evidence in view of the fact that it is of a hearsay nature. Our attention was also drawn to many reported cases but they can all be differentiated on the ground that in all the cases the disputed statements were not made by co-conspirators but were made by persons who had witnessed a certain incident.

Section 10 of the Evidence Act runs as below:—

“Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

In case the petitioner's case is correct, Sahu Jagdish Saran, Bhookan Saran Balgovind and Mohammad Taqi Hadi would be co-conspirators who had joined together to secure the withdrawal of Balgovind on payment of money to him. Any statement made by either of these persons in reference to their common intention after such intention was first entertained by them, would be a relevant fact and evidence on that point would be admissible in evidence. In my opinion, therefore, the statement of the witnesses who had attended the meeting of the 21st of December 1951 and who depose about the statement of Sahu Jagdish Saran would be admissible in evidence.

According to Ram Murti (P.W. 12), Sahu Jagdish Saran had first of all gone to Punjab National Bank alone on the day he cashed the cheque and returned after 10 or 15 minutes, and it was after half-an-hour that Sahu Jagdish Saran along with Mohammad Taqi Hadi, Bhookan Saran and Balgovind returned to the Bank and when they came out of the Bank 15 or 16 students standing outside the Bank shouted that the cycle had been sold for Rs. 1,600. The Cycle was the symbol of Balgovind. The statement of Ram Murti would, therefore, indicate that the cheque was cashed under suspicious circumstances when Balgovind had been won over on the promise that he would be paid the above amount in one form or the other. Shiv Kumar Gupta (P.W. 2), who is the Head Clerk of the Punjab National Bank at Amroha, has not supported Ram Murti. He clearly deposed that Sahu Jagdish Saran had come alone while presenting the cheque Ex. 2. Shiv Kumar Gupta referred to certain noise made by the boys outside the Bank, but he could not say what the boys were shouting. Thus Ram Murti (P.W. 12) has been contradicted by Shiv Kumar Gupta, and no reliance can be placed upon his assertion. His evidence appears to be an afterthought.

The remaining witnesses, namely Pyarey Lal, Pahlad Das, Virendra Kumar and Sita Ram, apparently belong to one group. Pyarey Lal and Sita Ram are the respondents in this case and are persons who were not given the Congress Ticket. These witnesses were cross-examined at length with regard to the local politics at Amroha. For the purposes of this case it is not necessary to refer to this part of their evidence. However, it may be mentioned that these persons are those who are deadly against the present Congressmen in power. Their evidence will therefore have to be viewed with caution and their oral evidence should not be accepted unless corroborated or appears to be correct.

It appears unnecessary to lengthen this note by referring to the contradictions in the evidence of these witnesses, specially when they have been touched by my brother in his main judgment. It may, however, be noted that their evidence regarding the notice of the first meeting Ex. 17, the reply of Chuttan Singh with regard to this meeting Ex. 30, resolution passed in that meeting Ex. 6, parcha sent by Pyarey Lal to Balgovind on 20th December 1951 Ex. 7, reply of Balgovind Ex. 8 and the notice of the second meeting of 21st December 1951 Ex. 9 appears to be correct, and the explanation that Ram Saran Das, Sahu Jagdish Saran and Balgovind have given why and in what circumstances they had signed the different papers is not correct and cannot be accepted. These documents Exs. 17, 30, 6, 7, 8 and 9 and also the endorsements by Ram Saran Das and Balgovind, Exs. 11 and 10, on the notice Ex. 9 can merely indicate that on the 17th of December 1951 Balgovind was willing to stand as the only candidate to oppose the

'Congress Candidate, namely, Mohammad Taqi Hadi, and that subsequently Balgovind changed his mind and attempts were made to put pressure upon him to adhere to the previous decision.

The most crucial part of the petitioner's evidence is regarding the statement made by Sahu Jagdish Saran in the meeting of the 21st of December 1951. The petitioner's case, in brief, is that in this meeting Sahu Jagdish Saran made it public that Balgovind was withdrawing from the contest on receipt of or on the promise that he would be paid Rs. 1,600 (Rs. 1,300 to him and Rs. 300 to Bhookan Saran, as above) after the polling. Pyarey Lal says that in this meeting Sahu Jagdish Saran had said that Balgovind would not fight the Election as he and respondent No. 1 would come to terms within 2 or 3 days, and that respondent No. 1 will pay Rs. 1,600 to Sahu Jagdish Saran out of which Rs. 1,300 will be paid to Balgovind and Rs. 300 to Bhookan Saran to clear off the account between Balgovind and Bhookan Saran. Virendra Kumar has made a similar statement and deposed that Sahu Jagdish Saran said in this meeting that no attempt should be made to persuade Balgovind as the matter had been virtually settled and he would not contest the election, that it has been settled that Mohammad Taqi Hadi would pay Rs. 1,600 on account of the expenses etc. of Balgovind which would be deposited with Sahu Jagdish Saran and that out of this money Rs. 1,300 would go to Balgovind and the rest to Bhookan Saran towards certain account between the two. Similarly, Sita Ram deposed that Sahu Jagdish Saran mentioned that attempts were being made uselessly as the matter had already been settled that Mohammad Taqi Hadi would deposit Rs. 1,600 with him out of which Rs. 1,300 would be given to Balgovind after the polling and the balance of Rs. 300 to Bhookan Saran on account of certain account pending between them. Disregarding the contradictions in the statement of the three witnesses, their evidence in short is that Sahu Jagdish Saran clearly mentioned in the meeting that Mohammad Taqi Hadi would deposit Rs. 1,600 with him out of which Rs. 1,300 will be paid to Balgovind and Rs. 300 to Bhookan Saran on account of Balgovind after the polling. If a clear expression was given to the transaction Sri Ram Yadav petitioner would have known about it. The witnesses have also stated that they had informed the petitioner and that after this meeting all the candidates started their independent canvassing. In other words, it must have been brought to the notice of the petitioner before he filed the election petition that Balgovind withdrew from the contest as he was offered a bribe of Rs. 1,600 which was to be paid after the polling in the form that Rs. 1,300 would be paid to him and Rs. 300 to Bhookan Saran after the polling. But even then these facts were not mentioned in the petition nor in the list of particulars. These details were supplied only when the petitioner was called upon to give further particulars. In this connection a reference may also be made to the following statement of the petitioner—

'It was on the 24th or 25th of December 1951 that I was informed that money had been paid to him. I had come to know of the payment by cheque. Sri Sita Ram and Sri Virendra Kumar had given this information to me. I had verified this from other persons also. I had made enquiries from Sahu Jagdish Saran.'

This statement of the petitioner will indicate that Rs. 1,600 had been paid to Balgovind by cheque before the 24th or 25th December 1951 and not that the payment was to be made after the polling. This statement is in direct conflict with the present version of the petitioner.

The petitioner places reliance upon two parchas pertaining to be of Ram Saran Das, Exs. 12 and 13. Ex. 12 is said to be in the handwriting of Pahlad Das but to bear the signatures of Ram Saran Das and Ex. 13 in the handwriting of Ram Saran Das. The relevant portions of these parchas are as below:—

Ex. 12—"Majboor hun Balgovind aur Bhookan Saran ek raye ke haîn wa mamla tehratin hai khatam kijiyege. musalmanon se kyon na faida uthaya jave. Solah adad Sahu Saheb ke superd kardiye javege. Mere kahin are jane ka kiya mauqa raha."

Ex. 13—"Terah adad hamare tin vakil sahab ko pahle vakil sahab ko diye javenge kiyon na faida uthaya jave."

It is said that the figures 13, 3 and 16 refer to Rs. 1,300, 300 and 1,600, amounts connected with the alleged bribe paid to Balgovind by Mohammad Taqi Hadi. Ram Saran Das had denied his signature on Ex. 12 and denied to have written the parcha Ex. 13. The petitioner's witnesses have proved the signature and handwriting of Ram Saran Das. As the petitioner's witnesses are not disinterested persons and are not persons of such a status as would not make an incorrect statement their oral assertion cannot be accepted. If the petitioner knew or felt that Ex. 12 bore the signature of Ram Saran Das and Ex. 13 was in his handwriting,

he (Petitioner) should have requested the Tribunal to send these papers to the handwriting expert for comparison and report. This was not done. Consequently, there is no conclusive evidence on record to show that Exs. 12 and 13 were written by or were signed by Ram Saran Das.

Full reliance cannot be placed on these documents on other grounds also. Ram Saran Das would not have liked to implicate his son in a criminal charge and consequently would not have agreed to put down in his handwriting that Balgovind had withdrawn on acceptance of Rs. 1,600 or that Rs. 1,600 would be paid to him by respondent No. 1. It would have been much easier for him, or for Balgovind, to appear in the meeting or before Pyarey Lal and others and to express why Balgovind was withdrawing from the contest. This latter alternative would have been more natural and probable. Further, on receiving the parchas Exs. 12 and 13 Pyarey Lal and Sita Ram would not have sat silent. Their whole intention was to oppose the Congress candidate and to see that he was not successful. Normally they would have taken full advantage of these two parchas and would have reported the matter to the public authorities. In any case, they would have given publicity to these parchas so that people may have no sympathy towards Mohammad Taqi Hadi and he may not be successful. The public would have lost faith in Mohammad Taqi Hadi, specially because he was a Muslim Leaguer and in spite of that fact was given a Congress Ticket. This was not done. Consequently, Exs. 12 and 13 will have to be viewed with caution. It can be that these two parchas are not genuine in that Ex. 12 does not bear the signatures of Ram Saran Das and Ex. 13 is not in his handwriting; or it can equally be that Ram Saran Das having no sympathy for Mohammad Taqi Hadi connived in creation of the documents after the filing of the election petition but at the same time did not have the courage to admit before the Tribunal that these documents were written by him or were written on his behalf.

Lastly, a reference may be made to the argument put forward on behalf of respondent No. 1 that the idea of 'united front' came into existence only after the Congress had received a thumping majority during the General Election and that such an idea could not be in the mind of the politicians of Amroha at the time of the General Election. This plea cannot have much force, specially when the evidence adduced by the respondent himself is of a contradictory nature. Professor Ram Saran and also the other witnesses have stated as if the idea of 'united front' came into existence when by-election took place at Aligarh; but Hari Charan Nigam (D.W. 4) office Secretary of the U.P. Congress Parliamentary Board, has made a statement to the contrary. Even if it be supposed that the idea of united front was not in prominence at the time of the General Election, certain people could think of it even at the time of the General Election when the sole intention in the mind of the disappointed persons was that the Congress candidate who was a Muslim Leaguer should not in any case be selected. The controversy at Amroha was more of a personal nature than a political one. Consequently, Pyarey Lal, Sita Ram and others could hold a meeting so that only one person may oppose the Congress candidate. The fact that no pamphlet had been issued after the meeting of the 17th of December 1951, no public meeting was held and no important election work was done on behalf of Balgovind cannot also be given much weight as Balgovind appears to have changed his mind within a few days of this meeting.

The respondent No. 1 has proved certain accounts submitted by Shahzade Singh, a worker of Chuttan Singh, and which forms part of his Return of Election Expenses. As Chuttan Singh and Shahzade Singh were not examined by either of the parties and they had no opportunity to explain the contents of that paper, it will not be proper to use an entry contained therein against the petitioner, specially because it is possible that the meeting was held on one day and the payment for tent etc. was made afterwards.

To conclude, respondent No. 1 and other persons connected with the alleged transaction have intentionally concealed facts and have withheld their account books and registers. Mohammad Taqi Hadi is a person who had in April 1953 clearly misappropriated the funds of the Consumers' Co-operative Society, Sub-Area (C). Such a person would have had no hesitation in appropriating for his own use the funds of the Co-operative Society during the General Election. His father also appears to have had with him more than Rs. 1,600 on 23rd December 1951. There could, therefore, be no possibility of respondent No. 1 having to borrow Rs. 1,600 from Sahu Jagdish Saran. The explanation that has been given for paying by cheque Rs. 1,300 to Balgovind and Rs. 300 to Bhokan Saran is also not convincing. The conduct of Mohammad Taqi Hadi, Sahu Jagdish Saran, Bhokan Saran and Balgovind is shrouded with mystery and severely reflects upon their honesty and creates a strong suspicion that Rs. 1,600 were paid for

some dishonest purpose. But the evidence adduced by the petitioner is reliable only to the extent that on 17th December 1951 a meeting was held in which it was decided that Balgovind alone should oppose the Congress candidate and that a few days afterwards Balgovind changed his mind with the result that another meeting was called on 21st December 1951. As to what happened in this meeting of 21st December 1951 is not free from doubts. If the case of the petitioner was and if his witnesses had simply deposed that in this meeting Sahu Jagdish Saran simply said that Balgovind would withdraw on receipt of Rs. 1,600 or that he had already withdrawn and Rs. 1,600 would be paid to him after the day of the polling the oral statement of Pyarey Lal, Sita Ram and others could have been accepted. But the case as given out by these witnesses in their statements is that Sahu Jagdish Saran had clearly expressed that Rs. 1,600 would be deposited with him and would be paid to Balgovind after the polling in the form that Rs. 1,300 would go to him and Rs. 300 to Bhookan Saran on account of certain account pending between the two. This part of the statement does not appear to be correct, in the sense that the petitioner and his witnesses did not in all probability know on 21st December 1951 that such were the facts. When the witnesses have clearly made an incorrect statement, it will not be safe to rely upon their oral statement regarding what Sahu Jagdish Saran said in that meeting. Parchas Exs. 12 and 13 are of a doubtful nature and reliance cannot be placed upon them for reasons already indicated above. Thus there remains a very strong suspicion against respondent No. 1, but these suspicions cannot replace the proof necessary for establishing a charge of bribery. In the circumstances it must be held that the petitioner has failed to prove the charge of corrupt practice of bribery but as there are strong suspicions against respondent No. 1 it will be but fair that the parties should bear their own costs.

(Sd.) D. S. MATHUR, I.C.S., *Chairman,*

The 25th August, 1953.

Election Tribunal, Bareilly.

I have had the advantage of reading the judgments of my brother Sri Data Ram Misra and of the learned Chairman and I concur with the views expressed by the learned Chairman. The matter seems to be very suspicious but suspicions cannot take the place of proof. I, therefore, agree with the findings arrived at by my learned brother that the petition should be dismissed and the parties should be dismissed and the parties should be ordered to bear their own costs.

(Sd.) J. K. KAPOOR, *Member.*

Order by the Tribunal.

The petition is hereby dismissed but the parties shall bear their own costs.

The 25th August, 1953.

(Sd.) D. S. MATHUR, I.C.S., *Chairman,*

(Sd.) D. R. MISRA, *Member.*

(Sd.) J. K. KAPOOR, *Member.*

'ANNEXURE A'

ORDER

This election petition was presented to question the election of Mohammad Taqi Hadl, respondent No. 1, the declaration of whose election was published in the Official Gazette of Uttar Pradesh, dated 26th February 1952.

It was said in this election petition that the election of respondent No. 1 was void and was liable to be set aside on the grounds detailed in the petition and in the list of particulars annexed thereto (hereinafter referred to as the list). Before the framing of issue No. 1 and also on the last date of hearing the petitioner's counsel made a statement that the petitioner did not press certain portions of his petition and the list. His case as it at present stand is, therefore, that the election of respondent No. 1 be set aside on the grounds that respondent No. 1 himself and through his agents committed the corrupt practice of bribery in the form given in sub-para. (a) and (b) of para. 4(1) of the petition (excluding the reference to the construction of a local irrigation dam), the detailed particulars and instance of which are given in Part I(a) and (b) at Nos. 1 and 2 of the list; that the said respondent No. 1 and his agents hired and procured vehicles for the conveyance of electors to the polling stations and back to their places, as detailed in Part III of the list; that even if the petitioner was not able to satisfy that the aforesaid corrupt practices were committed by respondent No. 1 or his agents or by other person with the connivance of the said respondent and his agents, the election of the said respondent had been procured and induced by the said corrupt

practices and the result of the election had been materially affected by them; that the return of election expenses lodged by respondent No. 1 was false in material particulars, full details of which were set out in Part V of the list; and that an illegal discrimination was made between the electors of the rural and urban areas in so far as firstly, women electors were given special facility of separate booths in the urban area, but the same were denied to the women electors of the rural area; secondly the electors of urban area were given special facility in the form of 40 booths for about 29,000 electors whereas the electors of rural area were denied that facility and had only 41 booths for about 41,000 voters and the petitioner was prejudiced on account of this denial as he belonged to rural area and many electors of rural area did not exercise their right of franchise on account of the denial of the said facilities.

A preliminary objection was taken by the counsel for respondent No. 1 that the petition was defective for not setting forth therein and also in the list full particulars of corrupt practices. No such point was specifically pleaded in the written statement, but in the interest of justice the following preliminary issue was framed to cover the above objection:—

- (1) Is the petition defective for not setting forth full particulars of corrupt practices in the petition and also in the list of particulars accompanying thereto? If so, to what effect?

FINDINGS

In para. 4(i)(a) of the petition it was alleged that Rs. 1,600 were paid by respondent No. 1 himself or through his agents, to respondent No. 4 as illegal gratification with the object of inducing and securing his withdrawal from the contest. Its details are given in Part I(a) of the list where it is said that respondent No. 1 secured the withdrawal of respondent No. 4 from the contest by paying Rs. 1,600 by means of a cheque drawn on the Punjab National Bank Ltd., Amroha, in favour of Sri Jagdish Saran, who was to deliver the amount to respondent No. 4 and Sri Jagdish Saran paid that amount by cheque to respondent No. 4. The full particulars of the cheque drawn by respondent No. 1 in favour of Sri Jagdish Saran have not been shown as to on what date this cheque was issued and where this cheque was delivered to Sri Jagdish Saran and so on. In the same way, full particulars have not been given regarding the payment by Jagdish Saran to respondent No. 4. It has not been shown as to whether this payment was made to respondent No. 4 by one cheque or several cheques, nor is it shown as to when, where and on which Bank these cheques were drawn and when they were delivered to respondent No. 4. Thus, we are of opinion that although the particulars are given but full and better particulars are wanting.

As regards the allegations of para. 4(i)(b) of the petition particulars are given in Part I(b) at item Nos. 1 and 2 of the list. A perusal of these particulars shows that full particulars are wanting. The time and place of payments and also the name or names of persons making the payments and also the names of payees are not given; nor is it shown as to whether the payment was made in cash or by cheque, in one or more instalment, and so on.

As regards para. 4(iii) of the petition particulars are given in Part III of the list, wherein it is said that respondent No. 1 and his agents hired and procured vehicles like motor trucks, lorry, cycle rickshaw and motor cars. The registration number of one of the vehicles only is given as U.S.N. 141 and the other vehicle has been described as carrying a trade mark of Biris on it. Particulars of other vehicles are not given and we think the petitioner cannot now be allowed to give the particulars of those vehicles at this stage. He can only be allowed to supply better particulars of the two vehicles described by him, in view of the fact that the matter had been reported to the Magistrate on duty who had made a note of that. Information regarding the names of persons who hired or procured the vehicles, and the names of their owners, is wanting which should now be supplied as far as they are known to or can be ascertained by the petitioner.

Paras. 4(vii) and 4(x) of the petition require no further particulars.

In para. 4(viii) of the petition it was said that return of election expenses lodged by respondent No. 1 was false in material particulars, full details of which were set out in Part V of the list. In Part V of the list the only particulars that are given are that respondent No. 1 failed to include the disputed claims in the return of election expenses, particularly an item of Rs. 25 on account of clerical work claimed by one Gauri Shanker of Amroha. It was also said in this connection that besides that the respondent No. 1 had not given the amount of expenses in the return in respect of clerical and other work which was paid by him. This is too vague an allegation and does not amount to giving the necessary particulars.

We now come to the main question whether the election petition is defective and should be dismissed, or the petitioner be directed to furnish better and fuller particulars of the alleged corrupt practices.

From what has already been discussed above, it will appear that vague allegations were made in paras. 4(iii) and (viii) of the petition and Parts III and V of the list, though particulars of some of the corrupt practices only were given in sufficient details. If the petitioner is permitted to give instances of these vague allegations, the scope of inquiry would be considerably widened and the contesting respondent would be handicapped and thereby prejudiced. We are of opinion that no such latitude should be granted to the petitioner and his vague allegations already indicated above should be ordered to be struck off. In other respects the provisions of section 83 of the Representation of the People Act, 1951, have been substantially complied with though not as was necessary. However, the Tribunal has the power under section 83(3) of the Representation of the People Act to allow the particulars included in the list to be amended, or to order the petitioner to furnish such further and better particulars as may be necessary for the purpose of ensuring a fair and effectual trial.

We are, therefore, of opinion that the election petition is somewhat defective, for not setting forth in the petition and also in the list full particulars of corrupt practices but not to the extent that it should be dismissed in toto. However, certain allegations contained in paras. 4(iii) and (viii) of the petition and Parts III and V of the list, already indicated above, are too vague and cannot be allowed to be amended nor can the petitioner be allowed to give their further and better particulars; and consequently such vague allegations will have to be excluded from the trial. We, therefore, order that these vague allegations be struck off from the petition and also the lists. As regards the other allegations the petitioner is directed to furnish further and better particulars in the light of the observations made above.

Issue is decided accordingly, and the petitioner is directed to furnish within a week further and better particulars of the corrupt practices in the light of observations made above.

(Sd.) D. S. MATHUR, I.C.S., *Chairman.*

(Sd.) J. K. KAPOOR, *Member.*

(Sd.) D. R. MISRA, *Member.*

The 6th February, 1953.

[No. 19/274/52-Elec.III/2011.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

